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SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 14, 2008 TO FEBRUARY 19, 2008

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 132453. February 14, 2008]

NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), represented by its Administrator, TEODORICO SANCHEZ, and NEA MANAGEMENT TEAM, represented by its Project Manager, DANILO CRUZ, *petitioners, vs.* **HON. FELICIANO V. BUENAVENTURA as Judge of the RTC, Br. 27, Cabanatuan City, DOMINADOR SALUDARES and ANTONIO T. DATU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; REGIONAL TRIAL COURTS; HAVE NO JURISDICTION TO ACT ON LABOR CASES OR VARIOUS INCIDENTS ARISING THEREFROM, INCLUDING THE EXECUTION OF DECISIONS, AWARDS, OR ORDERS. — It is the NLRC, not the RTC, which has jurisdiction over NEA's move for the quashal of the *Alias* Partial Writ of Execution. So *Deltaventures Resources, Inc. v. Hon. Cabato* instructs: "Ostensibly the complaint before the trial court was for the recovery of possession and injunction, but in essence it was an action challenging the legality or propriety of the levy *vis-à-vis* the *alias* writ of execution, including the acts performed by the Labor Arbiter and the Deputy Sheriff implementing the writ. The complaint was in effect a motion to quash the writ of execution of a decision rendered on a case properly within the jurisdiction of the Labor Arbiter, to

wit: Illegal Dismissal and Unfair Labor Practice. Considering the factual setting, it is then logical to conclude that the subject matter of the third party claim is but **an incident of the labor case,** a matter **beyond the jurisdiction of the regional trial courts.** Precedents abound confirming the rule that said courts have no jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards, or orders. Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice. Petitioner failed to realize that by filing its third-party claim with the deputy sheriff, it submitted itself to the jurisdiction of the Commission acting through the Labor Arbiter. It failed to perceive the fact that what it is really controverting is the decision of the Labor Arbiter and not the act of the deputy sheriff in executing said order issued as a consequence of said decision rendered."

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT. — There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought.

APPEARANCES OF COUNSEL

Clemente D. Paredes and *Pineda Romaquin and Beltran Law Offices* for petitioners.

The Solicitor General for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner National Electrification Administration (NEA) is a government-owned and controlled corporation exercising supervision and control over electric cooperatives pursuant to Presidential Decree No. 269, as amended.

From 1986 to 1988, the Nueva Ecija III Electric Cooperative, Inc. (NEECO III) experienced serious institutional problems due to its failure to pay its maturing bills from the National Power Corporation (NPC). To bail it out, NEA extended loans to NEECO III, to secure which it mortgaged its entire electric system or entire property to NEA.

NEECO III failed to pay its amortizations to NEA.

NEECO III thereupon availed of NEA's re-lending program to settle its obligations with the NPC. Under the NEA-NEECO III re-lending agreement, NEECO III's Board of Directors was converted into an advisory council, and NEA was to, as it did, designate, pursuant to Section 3 of Presidential Decree No. 1645,[1] a project supervisor/acting general manager to take charge of NEECO III's operations and management. In turn, NEA shelled out ₱30,000,000 to pay the NPC and to rehabilitate NEECO III. NEECO III, however, still defaulted in the amortization of its

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[1] Presidential Decree No. 1645, Section 3:

Section 5(a), Chapter II of Presidential Decree No. 269 is hereby amended by adding sub-paragraph (6) to read as follows:

[The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.]

> "(6) To authorize the NEA Administrator to designate, subject to the confirmation of the Board Administrators, an Acting General Manager and/or Project Supervisor for a Cooperative where vacancies in the said positions occur and/or when the interest of the Cooperative and the program so requires, and to prescribe the functions of said Acting General Manager and/or Project Supervisor, which powers shall not be nullified, altered or diminished by any policy or resolution of the Board of Directors of the Cooperative concerned."

loan to NEA,[2] drawing the latter to, by Resolution No. 42[3] approved on June 25, 1992, foreclose the mortgage on NEECO III's assets. Approved too were the acts of the NEA Management including the payment of separation pay to the employees of NEECO III as a result of its dissolution.

Former employees of NEECO III, in separate groups, subsequently filed complaints against NEECO III and Alberto Guiang (Guiang), a NEECO III employee-Project Supervisor/Acting General Manager,[4] for illegal dismissal, reinstatement, non-payment of salaries/backwages, 13th month pay, differentials, and bonuses.

By Decision of December 29, 1992, Labor Arbiter Ariel C. Santos, acting on one of those complaints, NLRC Case No. RAB-III-09-2920-92 which was filed by Josephine Manuel, *et al.*, disposed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainants, and the respondent is hereby ordered, as follows:
>
> 1. To immediately reinstate the complainants to their former positions in accordance with the provision of R.A. 6715, without loss of seniority rights and other privileges, with full payment of backwages inclusive of allowance and other benefits from the time that they were unjustly dismissed in June 1992 up to the time of actual reinstatement x x x
>
> x x x x x x x x x
>
> 2. To pay attorney's fee equivalent to 10% of the total award of the amount of ₱83,448.45;
>
> 3. Ordering the dismissal of the claim for damages for lack of merit;
>
> x x x x x x x x x
>
> SO ORDERED.[5] (Underscoring supplied)

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[2] *Vide rollo*, p. 311.

[3] *Id.* at 314.

[4] *Id.* at 298.

[5] Records, pp. 7-8.

NEECO III and Guiang filed with the National Labor Relations Commission (NLRC) an Appeal Memorandum with Application for Writ of Preliminary Injunction and Restraining Order,[6] which the NLRC dismissed for failure to post a supersedeas bond.[7] NEECO III and Guiang's motion for reconsideration was denied, prompting them to file before this Court a petition for *certiorari*[8] docketed as G.R. No. 110509.

On September 9, 1993, the NEA Board of Administrators issued Resolution No. 67 reading:

x x x x x x x x x

WHEREAS, after conducting consultative sessions with different sectors in Nueva Ecija which included the holding of a public hearing in Sta. Rosa, Nueva Ecija last July 31, 1993, management has recommended to the Board the organization of a new electric cooperative;

WHEREAS, under this proposal, the new electric cooperative will be made to assume the assets as well as the liabilities of the former NEECO III,

RESOLVED THEREFORE to approve, as it hereby approves, the grant of authority to the Administrator to create a management team to organize and operate the now defunct NEECO III and to recommend to the Board of Administrators within six months from this date the appropriate action to take with regard to the former NEECO III.[9] (Underscoring supplied)

In the meantime or on July 25, 1994, this Court dismissed G.R. No. 110509.[10] And it denied NEECO III and Guiang's motion for reconsideration.[11]

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[6] *Id*. at 8.

[7] *Id*. at 65.

[8] *Id*. at 55-78.

[9] *Rollo*, pp. 37-38.

[10] Records, p. 79.

[11] *Id*. at 9.

On November 21, 1994, the NLRC Arbiter, Branch III issued a Partial Writ of Execution of the Labor Arbiter's decision in the complaint of Josephine Manuel, *et al*.[12] NEA filed an Affidavit of Third Party Claim with the deputized sheriff of the said office opposing the Partial Writ of Execution, alleging that it was never impleaded as a party in NLRC Case No. RAB-III-09-2920-92.[13] The Labor Arbiter denied NEA's claim on the ground that NEA "has not been able to adequately and convincingly establish its legal ownership over the questioned levied properties of [NEECO III]."[14]

NEA filed a motion for reconsideration, which the Labor Arbiter treated as an appeal and thus forwarded it to the NLRC.[15] The NLRC denied the appeal.[16]

On September 30, 1996, the NLRC entered judgment to which the NEA filed an Urgent Motion to Vacate which was denied on October 7, 1996.[17]

NEA thereupon filed on October 18, 1996[18] with this Court, through the Office of the Solicitor General, a Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order and Preliminary Injunction,[19] docketed as **G.R. No. 126571**. NEA argued that

x x x x x x x x x

Petitioner NEA took over the properties and assets of the dissolved NEECO III in its legal capacity as CREDITOR-MORTGAGEE pending their disposition through foreclosure proceedings or *dacion en pago*

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[12] *Ibid*.

[13] *Id*. at 86.

[14] *Id*. at 88.

[15] *Id*. at 86.

[16] *Id*. at 87.

[17] *Ibid*.

[18] *Rollo*, p. 45.

[19] Records, pp. 80-109; *id*. at 45.

pursuant to its loan and mortgage agreements with NEECO III and Section 10 of PD 269, as amended by PD 1645. x x x[20]

x x x x x x x x x

x x x [P]ublic respondents gravely abused their discretion and acted without jurisdiction when they disregarded NEA Resolution Nos. 42 and 67, confirming NEECO III's dissolution and invoking petitioner's preferred possessory lien over NEECO III's properties and assets. These NEA Resolutions are matters [that] are beyond the legal competence of public respondents to set aside, because they may be reviewed only by this Honorable Court. x x x[21]

x x x x x x x x x

x x x The Writ of Execution was issued against the wrong person or to one not a party to the case; and facts and circumstances had transpired which render execution impossible and unjust.[22]

x x x x x x x x x

x x x EXECUTION in this case cannot be enforced against the defunct NEECO III properties as these are subject to a possessory lien in favor of NEA by virtue of the NEA-NEECO III Loan and Mortgage Agreements and PD 269, as amended.[23]
(Emphasis and underscoring in the original)

The Court dismissed NEA's petition for *certiorari* in G.R. No. 126571 by Resolution of November 18, 1996, for its failure to submit a duly sworn affidavit of service of copies of the petition on the respondents.[24]

The NEA Board of Administrators thereupon passed Resolution No. 63 on November 20, 1996 the pertinent portions of which read:

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[20] *Id*. at 90.

[21] *Id*. at 94.

[22] *Id*. at 96.

[23] *Id*. at 100.

[24] *Id*. at 110.

x x x x x x x x x

WHEREAS, the Board of Administrators passed Resolution No. 67 on September 9, 1993 creating a Management Team to operate the defunct NEECO III and tasking it to lay the groundwork for the organization of a new cooperative;

x x x x x x x x x

WHEREAS, on June 9, 1995, during the Board of Administrator's Meeting No. 6 management recommended the initiation of foreclosure proceedings but the Board advised Management to consider other options aside from initiating extra-judicial proceedings;

WHEREAS, of the three available legal remedies namely, extra-judicial foreclosure of chattel mortgage, *dacion en pago*, and receivership, ***dacion en pago*** has been found to be the most tenable and least expensive mode of disposition of the assets of the defunct NEECO III;

RESOLVED THEREFORE, TO AMEND, as it hereby amends, Board Resolution No. 42, series of 1992, approving the foreclosure of the assets of the defunct NEECO III, and to **confirm** the recommendation of management for the transfer of ownership of all properties and assets from the defunct NEECO III to NEA by way of ***dacion en pago***;

RESOLVED FURTHERMORE, that as a condition to the acceptance of the assets of the defunct NEECO III as payment through *dacion en pago*, to direct management to have an appraisal conducted on the assets of the electric cooperative and that acceptance of the assets as payment shall be only up to the extent of its appraised value;

RESOLVED FINALLY, to authorize Management after a proper valuation of the assets of the defunct NEECO III is made, and after compliance with other legal requisites, to dispose of NEECO III's properties assets through public bidding.[25] (Emphasis and underscoring supplied)

On September 10, 1997, Josephine Manuel, *et al.* filed before the NLRC an *Ex Parte* Motion for *Alias* Writ of Execution[26] of

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[25] *Rollo*, pp. 315-316. (The resolution starts at p. 316 and ends on p. 315.)

[26] Records, p. 10.

the decision in their favor. As prayed for, herein respondent Labor Arbiter Dominador B. Saludares (Saludares) issued on November 7, 1997 an *Alias* Partial Writ of Execution[27] directing the sheriff

> . . . to collect the amount of ₱2,485,382.86 representing the complainants' award plus execution fees of ₱24,700.00 payable to the NLRC pursuant to the Sheriff's Manual on Execution of Judgment.
>
> [In case of f]ailure to collect the said amount in cash, you are hereby directed to cause the full satisfaction of the same from the movable or immovable properties of the respondent [NEECO III] not exempt from execution in accordance with the provision[s] of the Labor Code of the Philippines and the New Rules of Court.
>
> Further, you are directed to accompany complainants and have them reinstated to their former or co-equal positions either physically or at the payroll without loss of seniority rights or other privileges.
>
> x x x x x x x x x[28]
>
> (Underscoring supplied)

On November 26, 1997, the NEA Management Team assailed before the Regional Trial Court (RTC) of Cabanatuan City, the *Alias* Partial Writ of Execution via Complaint[29] docketed as Civil Case No. 2934-AF, for injunction, declaration of nullity of executions/garnishments, writs of preliminary preventive and mandatory injunction and restraining order against respondent Labor Arbiter Saludares and respondent NLRC deputy Sheriff Antonio T. Datu (Datu). The NEA Management Team alleged that Datu forcibly entered NEA's premises, ransacked its valuables, and carted away its properties and those belonging to other persons without proper inventory, and that he and Saludares set the auction sale of the properties the following day, November 27, 1997.[30]

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[27] *Id*. at 7-11.

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

[29] *Id*. at 1-6.

[30] *Id*. at 2-3, 14.

Also on November 26, 1997, the NEA filed before the NLRC a Motion to Quash *Alias* [Partial] Writ of Execution,[31] which included in its prayer the quashal of the "Notice of Levy/Sale on execution of personal properties."[32] The records of the case do not show how the NLRC disposed of the said motion.

Branch 30 of the Cabanatuan RTC granted a temporary restraining order.[33]

In their Comment on the NEA Management Team's complaint, Saludares and Datu argued that the trial court has neither jurisdiction over the nature of the action nor the legal authority to enjoin the NLRC and its labor arbiters from enforcing their judgment or order.[34] They invoked the concurrent jurisdiction and co-equal rank of trial courts with the NLRC.[35]

Josephine Manuel, *et al*. later filed before the trial court a Motion for Intervention[36] and an Urgent Motion to Dismiss,[37] essentially echoing the stand of Saludares and Datu.

By Decision of January 2, 1998, the trial court dismissed the NEA Management Team's complaint on the following grounds:

x x x x x x x x x

Instead of a separate action and in order to avoid a multiplicity of suits, the plaintiffs could have sought the effective quashal of the Writ of Execution and subsequently the "Notice of Sale" from the Supreme Court in G.R. No. 110509, when – as contended by the plaintiff — the same was being enforced against the wrong parties x x x.

x x x x x x x x x

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[31] *Id*. at 30-35.

[32] *Id*. at 34.

[33] *Id*. at 18.

[34] *Id*. at 23.

[35] *Ibid*.

[36] *Id*. at 40-42.

[37] *Id*. at 43-50.

. . . [T]he Court is powerless to restrain the Honorable Dominador Saludares, Labor Arbiter, whose Decision, which was admitted by plaintiff, has become final and executory by virtue of the July 25, 1994 resolution of the Supreme Court x x x.

x x x x x x x x x

Neither could the defendant-sheriff Antonio T. Datu be restrained, he being just a ministerial officer designated to carry out the order of the defendant Dominador B. Saludares, NLRC Labor Arbiter, who has immediate and direct supervision and control over them.[38] (Underscoring supplied)

The NEA Management Team filed a Motion for Reconsideration,[39] which the trial court denied.[40] Hence, the present Petition for Review,[41] it arguing that NEA was not a party in NLRC Case No. RAB-III-09-2920-92, the complaint filed by Josephine Manuel, *et al*. (G.R. No. 110509), hence, cannot be bound by NLRC decisions, orders, writs of execution, and other processes.[42]

The petition must be dismissed outright on the ground of lack of jurisdiction.

It is the NLRC, not the RTC, which has jurisdiction over NEA's move for the quashal of the *Alias* Partial Writ of Execution. So *Deltaventures Resources, Inc. v. Hon. Cabato*[43] instructs:

Ostensibly the complaint before the trial court was for the recovery of possession and injunction, but in essence it was an action challenging the legality or propriety of the levy *vis-à-vis* the *alias* writ of execution, including the acts performed by the Labor Arbiter and the Deputy Sheriff implementing the writ. The complaint was in effect a motion to quash the writ of execution of a decision rendered on a case properly within the jurisdiction of the Labor Arbiter, to

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[38] *Id*. at 157-159.

[39] *Id*. at 160-164.

[40] *Id*. at 173.

[41] *Rollo*, pp. 18-47.

[42] *Id.* at 27-41.

[43] 384 Phil. 252 (2000).

wit: Illegal Dismissal and Unfair Labor Practice. Considering the factual setting, it is then logical to conclude that the subject matter of the third party claim is but an **incident of the labor case**, a matter **beyond the jurisdiction of the regional trial courts**.

Precedents abound confirming the rule that said courts have no jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards, or orders. Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice.

Petitioner failed to realize that by filing its third-party claim with the deputy sheriff, it submitted itself to the jurisdiction of the Commission acting through the Labor Arbiter. It failed to perceive the fact that what it is really controverting is the decision of the Labor Arbiter and not the act of the deputy sheriff in executing said order issued as a consequence of said decision rendered.[44] (Emphasis and underscoring supplied)

At all events, as priorly stated, NEA filed before the NLRC a Motion to Quash *Alias* [Partial] Writ of Execution on the same date that it filed the complaint that gave rise to the present case before the trial court[45] assailing the same writ. It thus committed forum-shopping.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.[46] Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues.[47] Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another — whether in the

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[44] *Id.* at 260-261.

[45] Records, pp. 30-35.

[46] *Ligon v. Court of Appeals*, 355 Phil. 503, 519 (1998). Citation omitted.

[47] *Ibid*.

two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions),[48] (b) rights or causes of action, and (c) reliefs sought.[49]

The remedies NEA sought before the NLRC in the Motion to Quash *Alias* Partial Writ of Execution are substantially the same as those sought before the RTC. The issues which NEA raised before the NLRC and those sought in the RTC are likewise the same.[50] The parties in both cases are the same, given the intervention in the case before the RTC by Josephine Manuel, *et al*.

NEA's argument that the NLRC acquired no jurisdiction over it[51] does not persuade. Applying the above-cited *Deltaventures Resources, Inc. v. Hon. Cabato* ruling, NEA submitted itself to the jurisdiction of the NLRC when it filed its Third Party Claim and Motion to Quash *Alias* Partial Writ of Execution.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

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[48] Vide *Mondragon Leisure and Resorts Corporation v. United Coconut Planter's Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590.

[49] *Ibid*.

[50] Vide records at 30-37; *rollo*, pp. 27-43.

[51] *Rollo,* p. 29.

SECOND DIVISION

[G.R. No. 155111. February 14, 2008]

CORNELIO LAMPESA and DARIO COPSIYAT, *petitioners, vs.* **DR. JUAN DE VERA, JR., FELIX RAMOS and MODESTO TOLLAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; DEFINED. — Article 2176 of the Civil Code provides that 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 *quasi-delict*.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW. — Whether a person is negligent or not is a question of fact, which we cannot pass upon in a petition for review on *certiorari*, as our jurisdiction is limited to reviewing errors of law. x x x This Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court on the matter of petitioners' negligence coincide. The resolution of factual issues is a function of the trial court, whose findings on these matters are, as a general rule, binding on this Court more so where these have been affirmed by the Court of Appeals.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; PRESUMPTION OF EMPLOYER'S NEGLIGENCE IN THE SELECTION AND/OR SUPERVISION OF HIS EMPLOYEE IN CASE NEGLIGENCE ON THE PART OF THE EMPLOYEE IS ESTABLISHED, HOW REBUTTED. — Once negligence on the part of the employee is established, a presumption instantly arises that the employer was negligent in the selection and/or supervision of said employee. To rebut this presumption, the employer must present adequate and

convincing proof that he exercised care and diligence in the selection and supervision of his employees.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED BELOW CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — [P]etitioners' liability for moral damages and attorney's fees cannot now be questioned for failure of petitioners to raise it before the Court of Appeals. It is a well-entrenched rule that issues not raised below 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.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES AND ATTORNEY'S FEES; AWARDED IN CASE AT BAR. — [T]he award of moral damages in this case is justifiable under Article 2219 (2) of the Civil Code, which provides for said damages in cases of *quasi-delicts* causing physical injuries. The award for attorney's fees is also proper under Article 2208 (2) of the Civil Code, considering that De Vera, Jr. was compelled to litigate when petitioners ignored his demand for an amicable settlement of his claim.

APPEARANCES OF COUNSEL

Rudolfo A. Lockey Law Office for petitioners.
Jose C. Quesada, Jr. for F. Ramos and M. Tollas.
Mel Mariano Ramos for Dr. J. De Vera, Jr.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks the reversal of the Decision[1] dated August 21, 2002 of the Court of Appeals in CA-G.R. CV No. 49778 which had affirmed the Decision[2] dated March 22, 1995 of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57, finding petitioners Cornelio Lampesa and Dario

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[1] *Rollo*, pp. 27-34. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eubulo G. Verzola and Danilo B. Pine concurring.

[2] CA *rollo*, pp. 50-56. Penned by Presiding Judge Bienvenido R. Estrada.

Copsiyat liable for damages on account of the injury sustained by respondent, Dr. Juan De Vera, Jr.

The antecedent facts, as found by the appellate court, are as follows:

On December 28, 1988, De Vera, Jr. boarded a passenger jeepney[3] bound for Baguio City driven by respondent Modesto Tollas. Upon reaching the Km. 4 marker of the national highway, the jeepney came to a complete stop to allow a truck,[4] then being driven by Dario Copsiyat, to cross the path of the jeepney in order to park at a private parking lot on the right side of the road. As Tollas began to maneuver the jeepney slowly along its path, the truck, which had just left the pavement, suddenly started to slide back towards the jeepney until its rear left portion hit the right side of the jeepney. De Vera, Jr., who was seated in the front passenger seat, noticed his left middle finger was cut off as he was holding on to the handle of the right side of the jeepney. He asked Tollas to bring him immediately to the hospital. The Medical Certificate[5] dated June 19, 1989, described De Vera, Jr.'s amputated left middle finger as follows:

> Neuroma, proximal phalange left middle finger OPERATION PERFORMED: Ray amputation middle finger left . . .[6]

P/Cpl. Arthur A. Bomogao of the Benguet Integrated National Police investigated and recorded the incident in his Police Investigation Report[7] dated January 17, 1989.

The defense, for its part, presented the following version of the incident: After delivering a load of vegetables, truck owner Lampesa instructed his driver, Copsiyat, to park the truck in the parking lot across the highway. While the rear of the truck was still on the pavement of the highway, an approaching

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[3] *Rollo*, p. 27. Bearing license plate number AVC-471.

[4] *Id*. Bearing license plate number PGU-160.

[5] Exhibit "C", folder of exhibits for the plaintiff, p. 4.

[6] *Id*.

[7] Exhibit "D-1", *id*. at 6.

passenger jeepney sideswiped the rear portion of the truck. This resulted in the dismemberment of De Vera, Jr.'s left middle finger, according to the defense.

Lampesa offered ₱5,000 to De Vera, Jr. as a gesture of humanitarian support, but the latter demanded ₱1 million although this amount was later lowered to ₱75,000. The parties failed to settle amicably; thus, De Vera, Jr. filed an action for damages[8] against Lampesa, Copsiyat, Ramos and Tollas, as the truck owner, truck driver, jeepney owner/operator and jeepney driver, respectively.

The trial court found driver Copsiyat negligent in the operation of his truck and ruled that his negligence was the proximate cause of the injuries suffered by De Vera, Jr. It also ruled that Lampesa did not exercise due diligence in the selection and supervision of his driver as required under Articles 2176[9] and 2180[10] of the Civil Code. The *fallo* of the decision reads:

WHEREFORE, judgment is hereby rendered:

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[8] Records, Vol. 1, pp.1-6.

[9] ART. 2176. 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.

[10] ART. 2180. 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.

x x x x x x x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

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.

x x x x x x x x x

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.

1. Ordering Dario Copsiyat and Cornelio F. Lampesa, jointly and solidarily to pay the plaintiff the sum of ₱75,000.00 as moral damages; ₱22,000.00 as actual damages; and ₱15,000.00 as attorney's fees plus the costs of suit.

2. The counterclaim and cross-claim of defendant Lampesa and Copsiyat and the counterclaim and counter-cross-claim of defendants Ramos and Tollas are hereby dismissed.

SO ORDERED.[11]

Upon review, the Court of Appeals upheld the trial court's findings of negligence on the part of Copsiyat and Lampesa. The dispositive portion of the decision reads:

WHEREFORE, the questioned Decision, dated March 22, 1995, of the Regional Trial Court of Pangasinan, Branch 57, in Civil Case No. SCC-1506, is hereby **AFFIRMED.**

SO ORDERED.[12]

Hence, the instant petition, raising the following as issues:

I.

WHO BETWEEN THE TWO (2) DRIVERS (COPSIYAT WHO WAS THE ELF TRUCK DRIVER AND TOLLAS FOR THE PASSENGER JEEP) WAS NEGLIGENT?

II.

GRANTING THAT COPSIYAT WAS ALSO NEGLIGENT, WHETHER OR NOT THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES ARE JUSTIFIED; AND

III.

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN THE APPRECIATION OF THE EVIDENCE.[13]

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[11] CA *rollo,* pp. 55-56.

[12] *Rollo,* pp. 33-34.

[13] *Id.* at 178.

Simply put, the issues for our resolution are: (1) Did the Court of Appeals err in affirming the trial court's ruling that petitioners are liable for the injury sustained by De Vera, Jr.? and (2) Did it err in awarding moral damages and attorney's fees?

Petitioners insist that it was Tollas, the jeepney driver, who was negligent. They maintain that Tollas should have first allowed the truck to park as he had a clear view of the scenario, compared to Copsiyat, the truck driver, who had a very limited view of the back of the truck. Lampesa also avers he did his legal duty in the selection and supervision of Copsiyat as his driver. He alleges that before hiring Copsiyat, he asked the latter if he had a professional driver's license.

For their part, respondents adopt the findings of the trial and appellate courts. They contend that it was Copsiyat who was negligent in driving the truck and the testimony of De Vera, Jr. on this matter was more than sufficient to prove the fact. De Vera, Jr. also contends that petitioners are liable for moral damages and attorney's fees under Articles 2217[14] and 2208[15] of the Civil Code.

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[14] ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[15] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

Considering the contentions of the parties, in the light of the circumstances in this case, we are in agreement that the petition lacks merit.

Article 2176 of the Civil Code provides that 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 *quasi-delict*. Whether a person is negligent or not is a question of fact, which we cannot pass upon in a petition for review on *certiorari*, as our jurisdiction is limited to reviewing errors of law.[16]

In this case, both the trial and the appellate courts found Copsiyat negligent in maneuvering the truck and ruled that his negligence was the proximate cause of the injury sustained by De Vera, Jr. Lampesa was also held accountable by both courts because he failed to exercise due diligence in the supervision of his driver. This Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court on the matter of petitioners' negligence coincide. The resolution of factual issues is a function of the trial court, whose findings on these matters are, as a general rule, binding on this Court more so where these have been affirmed by the Court of Appeals.[17]

Once negligence on the part of the employee is established, a presumption instantly arises that the employer was negligent

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[16] *Yambao v. Zuñiga*, G.R. No. 146173, December 11, 2003, 418 SCRA 266, 271.

[17] *Id*.

in the selection and/or supervision of said employee.[18] To rebut this presumption, the employer must present adequate and convincing proof that he exercised care and diligence in the selection and supervision of his employees.

Lampesa claims he did his legal duty as an employer in the selection and supervision of Copsiyat. But the record is bare on this point. It lacks any showing that Lampesa did so. Admitting *arguendo* that Copsiyat did show his professional license when he applied for the job of truck driver, Lampesa should not have been satisfied by the mere possession of a professional driver's license by Copsiyat. As an employer, Lampesa was duty bound to do more. He should have carefully examined Copsiyat's qualifications, experiences and record of service, if any.[19] Lampesa must also show that he exercised due supervision over Copsiyat *after* his selection. But all he had shown on record were bare allegations unsubstantiated by evidence. Having failed to exercise the due diligence required of him as employer, Lampesa cannot avoid solidary liability for the tortuous act committed by his driver, Copsiyat.

On a final note, petitioners' liability for moral damages and attorney's fees cannot now be questioned for failure of petitioners to raise it before the Court of Appeals. It is a well-entrenched rule that issues not raised below 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.[20] Moreover, the award of moral damages in this case is justifiable under Article 2219 (2)[21] of the Civil

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[18] *Syki v. Begasa*, G.R. No. 149149, October 23, 2003, 414 SCRA 237, 240.

[19] See *Yambao v. Zuñiga, supra* note 16 at 273-274.

[20] *Villanueva v. Salvador*, G.R. No. 139436, January 25, 2006, 480 SCRA 39, 52.

[21] ART. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

(2) Quasi-delicts causing physical injuries;

x x x x x x x x x

Code, which provides for said damages in cases of *quasi-delicts* causing physical injuries.[22] The award for attorney's fees is also proper under Article 2208 (2)[23] of the Civil Code, considering that De Vera, Jr. was compelled to litigate when petitioners ignored his demand for an amicable settlement of his claim.[24]

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated August 21, 2002 of the Court of Appeals in CA-G.R. CV No. 49778 is *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 158086. February 14, 2008]

ASJ CORPORATION and ANTONIO SAN JUAN, *petitioners, vs.* **SPS. EFREN & MAURA EVANGELISTA,** *respondents*.

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[22] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 254.

[23] ART. 2208, *supra* note 15.

x x x x x x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x x x x x x

[24] See *Laguna Tayabas Bus Co. v. Tiongson, et al.*, No. L-22143, April 30, 1966, 16 SCRA 940, 947.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEWING ERRORS OF LAW. — [O]nly errors of law are reviewable by this Court in a petition for review under Rule 45. The trial court, having had the opportunity to personally observe and analyze the demeanor of the witnesses while testifying, is in a better position to pass judgment on their credibility. More importantly, factual findings of the trial court, when amply supported by evidence on record and affirmed by the appellate court, are binding upon this Court and will not be disturbed on appeal. While there are exceptional circumstances when these findings may be set aside, none of them is present in this case.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; NO VALID APPLICATION OF PAYMENT IN CASE AT BAR. — Respondents' offer to partially satisfy their accounts is not enough to extinguish their obligation. Under Article 1248 of the Civil Code, the creditor cannot be compelled to accept partial payments from the debtor, unless there is an express stipulation to that effect. More so, respondents cannot substitute or apply as their payment the value of the chicks and by-products they expect to derive because it is necessary that all the debts be for the same kind, generally of a monetary character. Needless to say, there was no valid application of payment in this case.

3. ID.; ID.; RECIPROCAL OBLIGATIONS; NATURE. — Reciprocal obligations are those which arise from the same cause, wherein each party is a debtor and a creditor of the other, such that the performance of one is conditioned upon the simultaneous fulfillment of the other. From the moment one of the parties fulfills his obligation, delay by the other party begins.

4. ID.; HUMAN RELATIONS; ABUSE OF RIGHTS; ELEMENTS. — Under Article 19 of the Civil Code, an act constitutes an abuse of right if the following elements are present: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.

5. ID.; DAMAGES; TEMPERATE DAMAGES; AWARDED IN CASE AT BAR. — Since it was established that respondents suffered some pecuniary loss anchored on petitioners' abuse of rights, although the exact amount of actual damages cannot be ascertained, temperate damages are recoverable. In arriving at a reasonable level of temperate damages of ₱408,852.10, which is equivalent to the value of the chicks and by-products, which respondents, on the average, are expected to derive, this Court was guided by the following factors: **(a)** award of temperate damages will cover only Setting Report Nos. 109 to 113 since the threats started only on February 10 and 11, 1993, which are the pick-up dates for Setting Report Nos. 109 and 110; the rates of **(b)** 41% and **(c)** 17%, representing the average rates of conversion of broiler eggs into hatched chicks and egg by-products as tabulated by the trial court based on available statistical data which was unrebutted by petitioners; **(d)** 68,784 eggs, or the total number of broiler eggs under Setting Report Nos. 109 to 113; and **(e)** ₱14.00 and **(f)** ₱1.20, or the then unit market price of the chicks and by-products, respectively. Thus, the temperate damages of ₱408,852.10 is computed as follows:

[b X (d X e) + c X (d X f)]	=	Temperate Damages
41% X (68,784 eggs X ₱14)	=	₱394,820.16
17% X (68,784 eggs X P1.20)	=	₱ 14,031.94
[₱394,820.16 + ₱14,031.94]	=	₱408,852.10

6. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; GRANTED IN CASE AT BAR. – [W]e agree that petitioners' conduct flouts the norms of civil society and justifies the award of moral and exemplary damages. As enshrined in civil law jurisprudence: *Honeste vivere, non alterum laedere et jus suum cuique tribuere.* To live virtuously, not to injure others and to give everyone his due. Since exemplary damages are awarded, attorney's fees are also proper. Article 2208 of the Civil Code provides that: "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; x x x"

APPEARANCES OF COUNSEL

E.G. Ferry Law Offices for petitioners.
Venustiano S. Roxas & Associates Law Office for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] dated April 30, 2003 of the Court of Appeals in CA-G.R. CV No. 56082, which had affirmed the Decision[2] dated July 8, 1996 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 9 in Civil Case No. 745-M-93. The Court of Appeals, after applying the doctrine of piercing the veil of corporate fiction, held petitioners ASJ Corporation (ASJ Corp.) and Antonio San Juan solidarily liable to respondents Efren and Maura Evangelista for the unjustified retention of the chicks and egg by-products covered by Setting Report Nos. 108 to 113.[3]

The pertinent facts, as found by the RTC and the Court of Appeals, are as follows:

Respondents, under the name and style of R.M. Sy Chicks, are engaged in the large-scale business of buying broiler eggs, hatching them, and selling their hatchlings (chicks) and egg by-products[4] in Bulacan and Nueva Ecija. For the incubation and hatching of these eggs, respondents availed of the hatchery services of ASJ Corp., a corporation duly registered in the name of San Juan and his family.

Sometime in 1991, respondents delivered to petitioners various quantities of eggs at an agreed service fee of 80 centavos per

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[1] *Rollo*, pp. 28-42. Penned by Associate Justice Romeo A. Brawner, with Associate Justices Eliezer R. De Los Santos and Regalado E. Maambong concurring.

[2] *Id*. at 79-97. Penned by Judge D. Roy A. Masadao, Jr.

[3] *Id*. at 64-66.

[4] *Id*. at 30. Such as "*balut*," "*penoy*" and "exploders."

egg, whether successfully hatched or not. Each delivery was reflected in a "Setting Report" indicating the following: the number of eggs delivered; the date of setting or the date the eggs were delivered and laid out in the incubators; the date of candling or the date the eggs, through a lighting system, were inspected and determined if viable or capable of being hatched into chicks; and the date of hatching, which is also the date respondents would pick-up the chicks and by-products. Initially, the service fees were paid upon release of the eggs and by-products to respondents. But as their business went along, respondents' delays on their payments were tolerated by San Juan, who just carried over the balance, as there may be, into the next delivery, out of keeping goodwill with respondents.

From January 13 to February 3, 1993, respondents had delivered to San Juan a total of 101,3[50][5] eggs, detailed as follows:[6]

Date Set	SR Number	No. of eggs delivered	Date hatched/ Pick-up date
1/13/1993	SR 108	32,566 eggs	February 3, 1993
1/20/1993	SR 109	21,485 eggs	February 10, 1993
1/22/1993	SR 110	7,213 eggs	February 12, 1993
1/28/1993	SR 111	14,495 eggs	February 18, 1993
1/30/1993	SR 112	15,346 eggs	February 20, 1993
2/3/1993	SR 113	10,24[5][7] eggs	February 24, 1993
TOTAL		101,350 eggs	

On February 3, 1993, respondent Efren went to the hatchery to pick up the chicks and by-products covered by Setting Report No. 108, but San Juan refused to release the same due to respondents' failure to settle accrued service fees on several setting reports starting from Setting Report No. 90. Nevertheless, San Juan accepted from Efren 10,245 eggs covered by Setting

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[5] 101,347 in other parts of the records.

[6] *Rollo*, pp. 64-66, 81.

[7] 10,242 in other parts of the records.

Report No. 113 and ₱15,000.00[8] in cash as partial payment for the accrued service fees.

On February 10, 1993, Efren returned to the hatchery to pick up the chicks and by-products covered by Setting Report No. 109, but San Juan again refused to release the same unless respondents fully settle their accounts. In the afternoon of the same day, respondent Maura, with her son Anselmo, tendered ₱15,000.00[9] to San Juan, and tried to claim the chicks and by-products. She explained that she was unable to pay their balance because she was hospitalized for an undisclosed ailment. San Juan accepted the ₱15,000.00, but insisted on the full settlement of respondents' accounts before releasing the chicks and by-products. Believing firmly that the total value of the eggs delivered was more than sufficient to cover the outstanding balance, Maura promised to settle their accounts only upon proper accounting by San Juan. San Juan disliked the idea and threatened to impound their vehicle and detain them at the hatchery compound if they should come back unprepared to fully settle their accounts with him.

On February 11, 1993, respondents directed their errand boy, Allan Blanco, to pick up the chicks and by-products covered by Setting Report No. 110 and also to ascertain if San Juan was still willing to settle amicably their differences. Unfortunately, San Juan was firm in his refusal and reiterated his threats on respondents. Fearing San Juan's threats, respondents never went back to the hatchery.

The parties tried to settle amicably their differences before police authorities, but to no avail. Thus, respondents filed with the RTC an action for damages based on petitioners' retention of the chicks and by-products covered by Setting Report Nos. 108 to 113.

On July 8, 1996, the RTC ruled in favor of respondents and made the following findings: (1) as of Setting Report No. 107,

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[8] *Rollo,* p. 67.

[9] *Id*.

respondents owed petitioners ₱102,336.80;[10] (2) petitioners withheld the release of the chicks and by-products covered by Setting Report Nos. 108-113;[11] and (3) the retention of the chicks and by-products was unjustified and accompanied by threats and intimidations on respondents.[12] The RTC disregarded the corporate fiction of ASJ Corp.,[13] and held it and San Juan solidarily liable to respondents for ₱529,644.80 as actual damages, ₱100,000.00 as moral damages, ₱50,000.00 as attorney's fees, plus interests and costs of suit. The decretal portion of the decision reads:

> WHEREFORE, based on the evidence on record and the laws/ jurisprudence applicable thereon, judgment is hereby rendered ordering the defendants to pay, jointly and severally, unto the plaintiffs the amounts of ₱529,644.80, representing the value of the hatched chicks and by-products which the plaintiffs on the average expected to derive under Setting Reports Nos. 108 to 113, inclusive, with legal interest thereon from the date of this judgment until the same shall have been fully paid, ₱100,000.00 as moral damages and ₱50,000.00 as attorney's fees, plus the costs of suit.
>
> SO ORDERED.[14]

Both parties appealed to the Court of Appeals. Respondents prayed for an additional award of ₱76,139.00 as actual damages for the cost of other unreturned by-products and ₱1,727,687.52 as unrealized profits, while petitioners prayed for the reversal of the trial court's entire decision.

On April 30, 2003, the Court of Appeals denied both appeals for lack of merit and affirmed the trial court's decision, with the slight modification of including an award of exemplary damages of ₱10,000.00 in favor of respondents. The Court of Appeals, applying the doctrine of piercing the veil of corporate fiction,

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[10] *Id*. at 88-92.

[11] *Id*. at 87-88.

[12] *Id*. at 92-93.

[13] *Id*. at 93-94.

[14] *Id*. at 96-97.

considered ASJ Corp. and San Juan as one entity, after finding that there was no bona fide intention to treat the corporation as separate and distinct from San Juan and his wife Iluminada. The *fallo* of the Court of Appeals' decision reads:

> WHEREFORE, in view of the foregoing, the Decision appealed from is hereby **AFFIRMED**, with the **slight modification** that exemplary damages in the amount of ₱10,000.00 are awarded to plaintiffs.
>
> Costs against defendants.
>
> SO ORDERED.[15]

Hence, the instant petition, assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING, AS DID THE COURT *A QUO*, THAT PETITIONERS WITHHELD/OR FAILED TO RELEASE THE CHICKS AND BY-PRODUCTS COVERED BY SETTING REPORT NOS. 108 AND 109.

II.

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING THE HEARSAY TESTIMONY OF MAURA EVANGELISTA SUPPORTIVE OF ITS FINDINGS THAT PETITIONERS WITHHELD/OR FAILED TO RELEASE THE CHICKS AND BY-PRODUCTS COVERED BY SETTING REPORT NOS. 108 AND 109.

III.

THE HONORABLE COURT OF APPEALS, AS DID THE COURT *A QUO*, ERRED IN NOT FINDING THAT RESPONDENTS FAILED TO RETURN TO THE PLANT TO GET THE CHICKS AND BY-PRODUCTS COVERED BY SETTING REPORT NOS. 110, 111, 112 AND 113.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING, AS DID THE COURT *A QUO*, THAT THE PIERCING OF THE VEIL OF CORPORATE ENTITY IS JUSTIFIED, AND CONSEQUENTLY

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[15] *Id*. at 41-42.

HOLDING PETITIONERS JOINTLY AND SEVERALLY LIABLE TO PAY RESPONDENTS THE SUM OF ₱529,644.[80].

V.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS HAVE VIOLATED THE PRINCIPLES ENUNCIATED IN ART. 19 OF THE NEW CIVIL CODE AND CONSEQUENTLY IN AWARDING MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

VI.

THE HONORABLE COURT OF APPEALS ERRED IN NOT AWARDING PETITIONERS' COUNTERCLAIM.[16]

Plainly, the issues submitted for resolution are: *First,* did the Court of Appeals err when (a) it ruled that petitioners withheld or failed to release the chicks and by-products covered by Setting Report Nos. 108 and 109; (b) it admitted the testimony of Maura; (c) it did not find that it was respondents who failed to return to the hatchery to pick up the chicks and by-products covered by Setting Report Nos. 110 to 113; and (d) it pierced the veil of corporate fiction and held ASJ Corp. and Antonio San Juan as one entity? *Second,* was it proper to hold petitioners solidarily liable to respondents for the payment of ₱529,644.80 and other damages?

In our view, there are two sets of issues that the petitioners have raised.

The *first* set is factual. Petitioners seek to establish a set of facts contrary to the factual findings of the trial and appellate courts. However, as well established in our jurisprudence, only errors of law are reviewable by this Court in a petition for review under Rule 45.[17] The trial court, having had the opportunity to personally observe and analyze the demeanor of the witnesses while testifying, is in a better position to pass judgment on their credibility.[18]

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

[17] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez,* G.R. No. 142913, August 9, 2005, 466 SCRA 120, 128-129.

[18] *People v. Galam,* G.R. No. 114740, February 15, 2000, 325 SCRA 489, 497.

More importantly, factual findings of the trial court, when amply supported by evidence on record and affirmed by the appellate court, are binding upon this Court and will not be disturbed on appeal.[19] While there are exceptional circumstances[20] when these findings may be set aside, none of them is present in this case.

Based on the records, as well as the parties' own admissions, the following facts were uncontroverted: (1) As of Setting Report No. 107, respondents were indebted to petitioners for ₱102,336.80 as accrued service fees for Setting Report Nos. 90 to 107;[21] (2) Petitioners, based on San Juan's own admission,[22] did not release the chicks and by-products covered by Setting Report Nos. 108 and 109 for failure of respondents to fully settle their previous accounts; and (3) Due to San Juan's threats, respondents never returned to the hatchery to pick up those covered by Setting Report Nos. 110 to 113.[23]

Furthermore, although no hard and fast rule can be accurately laid down under which the juridical personality of a corporate entity may be disregarded, the following probative factors of identity justify the application of the doctrine of piercing the

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[19] *MOF Company, Inc. v. Enriquez*, G.R. No. 149280, May 9, 2002, 382 SCRA 248, 252.

[20] *Union Refinery Corporation v. Tolentino, Sr.*, G.R. No. 155653, September 30, 2005, 471 SCRA 613, 618-619.

[21] *Rollo*, pp. 89-91. See Tabulation of Payments and Balances.

[22] TSN, August 16,1995, pp. 22-23.

ATTY. FERRY

x x x x x x x x x

Q: Now, according to the plaintiff[,] the chicks and spoiled eggs corresponding to Setting Report Nos. 108 up to 113 were not released by your plant because your company refused to release them because of the fact that no payment was made, what can you say to that?

x x x x x x x x x

WITNESS

A: That is true, sir.

[23] *Rollo,* pp. 195-196.

veil of corporate fiction[24] in this case: (1) San Juan and his wife own the bulk of shares of ASJ Corp.; (2) The lot where the hatchery plant is located is owned by the San Juan spouses; (3) ASJ Corp. had no other properties or assets, except for the hatchery plant and the lot where it is located; (4) San Juan is in complete control of the corporation; (5) There is no bona fide intention to treat ASJ Corp. as a different entity from San Juan; and (6) The corporate fiction of ASJ Corp. was used by San Juan to insulate himself from the legitimate claims of respondents, defeat public convenience, justify wrong, defend crime, and evade a corporation's subsidiary liability for damages.[25] These findings, being purely one of fact,[26] should be respected. We need not assess and evaluate the evidence all over again where the findings of both courts on these matters coincide.

On the *second* set of issues, petitioners contend that the retention was justified and did not constitute an abuse of rights since it was respondents who failed to comply with their obligation. Respondents, for their part, aver that all the elements on abuse of rights were present. They further state that despite their offer to partially satisfy the accrued service fees, and the fact that the value of the chicks and by-products was more than sufficient to cover their unpaid obligations, petitioners still chose to withhold the delivery.

The crux of the controversy, in our considered view, is simple enough. Was petitioners' retention of the chicks and by-products on account of respondents' failure to pay the corresponding service fees unjustified? While the trial and appellate courts had the same decisions on the matter, suffice it to say that a modification is proper. Worth stressing, petitioners' act of withholding the chicks and by-products is entirely different from petitioners' unjustifiable acts of threatening respondents. The retention had legal basis; the threats had none.

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[24] See *Concept Builders, Inc. v. NLRC,* G.R. No. 108734, May 29, 1996, 257 SCRA 149, 158.

[25] See *rollo,* pp. 34-37.

[26] *China Banking Corporation v. Dyne-Sem Electronics Corporation,* G.R. No. 149237, July 11, 2006, 494 SCRA 493, 499.

To begin with, petitioners' obligation to deliver the chicks and by-products corresponds to three dates: the date of hatching, the delivery/pick-up date and the date of respondents' payment. On several setting reports, respondents made delays on their payments, but petitioners tolerated such delay. When respondents' accounts accumulated because of their successive failure to pay on several setting reports, petitioners opted to demand the full settlement of respondents' accounts as a condition precedent to the delivery. However, respondents were unable to fully settle their accounts.

Respondents' offer to partially satisfy their accounts is not enough to extinguish their obligation. Under Article 1248[27] of the Civil Code, the creditor cannot be compelled to accept partial payments from the debtor, unless there is an express stipulation to that effect. More so, respondents cannot substitute or apply as their payment the value of the chicks and by-products they expect to derive because it is necessary that all the debts be for the same kind, generally of a monetary character. Needless to say, there was no valid application of payment in this case.

Furthermore, it was respondents who violated the very essence of reciprocity in contracts, consequently giving rise to petitioners' right of retention. This case is clearly one among the species of non-performance of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, wherein each party is a debtor and a creditor of the other, such that the performance of one is conditioned upon the simultaneous fulfillment of the other.[28] From the moment one of the parties fulfills his obligation, delay by the other party begins.[29]

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[27] ART. 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

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[28] *Cortes v. Court of Appeals*, G.R. No. 126083, July 12, 2006, 494 SCRA 570, 576.

[29] CIVIL CODE, Art. 1169, last paragraph.

Since respondents are guilty of delay in the performance of their obligations, they are liable to pay petitioners actual damages of ₱183,416.80, computed as follows: From respondents' outstanding balance of ₱102,336.80, as of Setting Report No. 107, we add the corresponding services fees of ₱81,080.00[30] for Setting Report Nos. 108 to 113 which had remain unpaid.

Nonetheless, San Juan's subsequent acts of threatening respondents should not remain among those treated with impunity. Under Article 19[31] of the Civil Code, an act constitutes an abuse of right if the following elements are present: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[32] Here, while petitioners had the right to withhold delivery, the high-handed and oppressive acts of petitioners, as aptly found by the two courts below, had no legal leg to stand on. We need not weigh the corresponding pieces of evidence all over again because factual findings of the trial court, when adopted and confirmed by the appellate court, are binding and conclusive and will not be disturbed on appeal.[33]

Since it was established that respondents suffered some pecuniary loss anchored on petitioners' abuse of rights, although the exact amount of actual damages cannot be ascertained, temperate damages are recoverable. In arriving at a reasonable level of temperate damages of ₱408,852.10, which is equivalent to the value of the chicks and by-products, which respondents,

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[30] Service Fees for Setting Report Nos. 108-113 = Total No. of Eggs Delivered X ₱0.80 per egg.

₱81,080.00 = 101,350 eggs X ₱0.80 per egg.

[31] ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[32] *Far East Bank and Trust Company v. Pacilan, Jr.*, G.R. No. 157314, July 29, 2005, 465 SCRA 372, 382.

[33] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez, supra* note 17, at 128.

on the average, are expected to derive, this Court was guided by the following factors: **(a)** award of temperate damages will cover only Setting Report Nos. 109 to 113 since the threats started only on February 10 and 11, 1993, which are the pick-up dates for Setting Report Nos. 109 and 110; the rates of **(b)** 41% and **(c)** 17%, representing the average rates of conversion of broiler eggs into hatched chicks and egg by-products as tabulated by the trial court based on available statistical data which was unrebutted by petitioners; **(d)** 68,784 eggs,[34] or the total number of broiler eggs under Setting Report Nos. 109 to 113; and **(e)** ₱14.00 and **(f)** ₱1.20, or the then unit market price of the chicks and by-products, respectively.

Thus, the temperate damages of ₱408,852.10 is computed as follows:

[b X (d X e) + c X (d X f)]	=	Temperate Damages
41% X (68,784 eggs X ₱14)	=	₱394,820.16
17% X (68,784 eggs X ₱1.20)	=	₱ 14,031.94
[₱394,820.16 + ₱14,031.94]	=	₱408,852.10

At bottom, we agree that petitioners' conduct flouts the norms of civil society and justifies the award of moral and exemplary damages. As enshrined in civil law jurisprudence: *Honeste vivere, non alterum laedere et jus suum cuique tribuere*. To live virtuously, not to injure others and to give everyone his due.[35] Since exemplary damages are awarded, attorney's fees are also proper. Article 2208 of the Civil Code provides that:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

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[34]

Setting Report No.	No. of eggs delivered
SR No. 109	21,485 eggs
SR No. 110	7,213 eggs
SR No. 111	14,495 eggs
SR No. 112	15,346 eggs
SR No. 113	10,245 eggs
TOTAL	68,784 eggs

[35] *Uypitching v. Quiamco*, G.R. No. 146322, December 6, 2006, 510 SCRA 172, 173.

(1) When exemplary damages are awarded;

x x x x x x x x x

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision dated April 30, 2003 of the Court of Appeals in CA-G.R. CV No. 56082 is hereby *MODIFIED* as follows:

a. Respondents are *ORDERED* to pay petitioners ₱183,416.80 as actual damages, with interest of 6% from the date of filing of the complaint until fully paid, plus legal interest of 12% from the finality of this decision until fully paid.

b. The award of actual damages of ₱529,644.80 in favor of respondents is hereby *REDUCED* **to** ₱408,852.10, with legal interest of 12% from the date of finality of this judgment until fully paid.

c. The award of moral damages, exemplary damages and attorney's fees of ₱100,000.00, ₱10,000.00, ₱50,000.00, respectively, in favor of respondents is hereby *AFFIRMED*.

d. All other claims are hereby *DENIED*.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

EN BANC

[G.R. No. 165121. February 14, 2008]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **PETER E. NIERRAS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; GRAVE MISCONDUCT AND SIMPLE MISCONDUCT, DISTINGUISHED. — Misconduct refers to intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. To constitute an administrative offense, misconduct should relate to, or be connected with, the performance of the official functions and duties of a public officer. Grave misconduct is distinguished from simple misconduct in that the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest in grave misconduct. Otherwise stated, the misconduct is grave if it involves the additional element of corruption. Corruption as an element of grave misconduct consists of the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

2. ID.; ID.; ID.; ID.; SEXUAL HARASSMENT DOES NOT NECESSARILY OR AUTOMATICALLY CONSTITUTE GRAVE MISCONDUCT. — Under CSC Memorandum Circular No. 19, Series of 1994, sexual harassment does not necessarily or automatically constitute "grave misconduct." Besides, under paragraph 2 of Section 1 thereof, sexual harassment constitutes a ground for disciplinary action under the offense of "Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, or Simple Misconduct."

3. ID.; ID.; ID.; ID.; IN THE DETERMINATION OF PENALTIES TO BE IMPOSED, MITIGATING AND AGGRAVATING CIRCUMSTANCES MAY BE CONSIDERED. — Section 16, Rule XIV of the Rules Implementing Book V of Executive Order

No. 292 provides that in the determination of penalties to be imposed, mitigating and aggravating circumstances may be considered. Considering the fact that this is the first time that Nierras is being administratively charged, it would be too harsh to impose on him the penalty of dismissal outright. Worth noting, in the case of *Civil Service Commission v. Belagan*, although the Court found that the act of the offending public official constituted grave misconduct, still it did not impose the penalty of dismissal on him, considering the fact that it was his first offense.

4. ID.; ID.; ID.; ID.; DISMISSAL WITH FORFEITURE OF BENEFITS; SHOULD NOT BE IMPOSED FOR ALL INFRACTIONS INVOLVING MISCONDUCT, PARTICULARLY WHEN IT IS A FIRST OFFENSE. — Dismissal with forfeiture of benefits, in our view, should not be imposed for all infractions involving misconduct, particularly when it is a first offense x x x.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Villegas Sontillano Law Office for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* seeking to annul and set aside the partially amended Decision[1] dated July 27, 2004 rendered by the Court of Appeals in CA-G.R. SP No. 64122, which reduced to six months without pay the penalty of dismissal imposed on Nierras by the Civil Service Commission (CSC).

The *dramatis personae* in this case are complainant Olga C. Oña, a secretary of the Local Water Utilities Administration (LWUA), and respondent Peter E. Nierras, the Acting General Manager of the Metro Carigara Water District, Leyte.

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[1] *Rollo*, pp. 35-38. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Rodrigo V. Cosico and Juan Q. Enriquez, Jr. concurring.

The antecedent facts of the case are as follows:

On July 17, 1994, Oña left for Leyte upon orders from her Department Manager, Hector Dayrit, to assist in the formation of the San Isidro Water District. Upon arrival in Tacloban City, Oña was endorsed by the LWUA management adviser to Nierras.

On July 18, 1994, Oña and Nierras proceeded to San Isidro, Leyte, where she held a briefing for the local officials. After the official briefing, Oña asked Nierras where the municipal mayor would accommodate her. Nierras replied that he would accommodate her in his farm in Calubian. They then took a motorcycle to Calubian where, according to Oña, Nierras already made passes at her.

In Calubian, they first deposited their personal belongings in the house of Nierras' cousin where he said they would stay for the night. Thereafter, they proceeded to Nierras' farm. Upon their arrival, Nierras asked a tenant to purchase liquor and invited the other tenants to a drinking spree. Around 10:30 p.m., Oña, already tired and sleepy, reminded Nierras that they should go back to his cousin's house to retire for the night. However, instead of going back, Nierras gave her a sleeping mat, a blanket and a pillow and was told to rest. She then left and chose a corner in the balcony of the house in the farm to sleep.

Around midnight, Oña was awakened when Nierras lay down beside her and crept underneath her blanket. To her surprise, she saw that Nierras was half-naked with his pants already unzipped. She tried to run away but Nierras pulled her and ordered her to go back to sleep. It was only when she screamed "*Ayoko, Ayoko, Ayoko*!" that Nierras stopped grabbing and pulling her.

For his part, Nierras denied the charge and averred that when they were about to go back to the house of Nierras' cousin, Oña insisted that it would just be better if they slept at the farm. Nierras then managed to borrow one blanket, one pillow and one mat. Thereafter, they lay down on the same mat and started conversing. During their conversation, Oña said that she badly needed ₱5,000 at the moment. Oña asked Nierras if he could lend her the money. Shocked by what Oña said, Nierras

just laughed and expressed his amazement through a sarcastic smile. Thereafter, Oña never talked anymore to Nierras.

After about an hour, Nierras said he saw that a part of the blanket was not being used by Oña. Because of the weather and the swarm of mosquitoes, Nierras asked if he could use a part of the blanket. Oña kept mum so he managed to use the unused part of the blanket to cover part of himself to lessen mosquito bites. When Oña felt that Nierras was using a part of the blanket, she immediately stood up, bringing with her the pillow. She never came back to the place where she slept.

On August 11, 1994, Oña filed an incident report[2] addressed to the Administrator of the LWUA, charging Nierras with sexual harassment. She also implicated her immediate supervisors, Hector Dayrit and Francisco Bula, Jr., in the charge for possible collusion and conspiracy for failure to act on her complaint despite being informed of what Nierras did to her.

On October 28, 1994, Oña filed with the CSC an affidavit[3] for sexual harassment, grave misconduct and conduct unbecoming a public officer. After a prior investigation, the CSC formally charged Nierras with grave misconduct after finding a *prima facie* case against him. But finding no evidence of collusion with him, the CSC dismissed the complaint against Dayrit and Bula.

On September 29, 2000, the CSC found Nierras guilty of Grave Misconduct.[4] The dispositive portion of the decision states:

> WHEREFORE, Peter E. Nierras is hereby found GUILTY of Grave Misconduct and is meted the penalty of dismissal from the service with all the accessory penalties.
>
> Let a copy of this Resolution as well as other relevant documents be furnished the Office of the Ombudsman for whatever criminal action it may take under the premises.[5]

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[2] CA *rollo*, pp. 93-94.

[3] *Id*. at 74-76.

[4] *Rollo*, pp. 116-124.

[5] *Id*. at 124.

Nierras moved for reconsideration; however, the same was denied. Hence, he appealed to the Court of Appeals.

On March 5, 2004, the Court of Appeals promulgated a decision[6] affirming the resolutions issued by the CSC finding Nierras guilty of grave misconduct through sexual harassment and upheld the penalty of dismissal imposed upon him.

Nierras filed a Motion for Reconsideration[7] dated March 30, 2004, asking the Court of Appeals to reverse its decision and reduce the penalty of dismissal. On July 27, 2004, the Court of Appeals rendered the partially amended decision reducing the penalty of dismissal to suspension of six months without pay on the basis of the Resolution dated July 8, 2004 of this Court in *Veloso v. Caminade*.[8] The dispositive portion of the said decision states:

> WHEREFORE, our Decision promulgated on March 5, 2004 is hereby PARTIALLY AMENDED by reducing the penalty of dismissal imposed on the petitioner by the Civil Service Commission to SIX (6) MONTHS of SUSPENSION WITHOUT PAY.
>
> SO ORDERED.[9]

Hence, the instant petition, wherein petitioner poses a single issue for our resolution:

> WHICH IS THE APPLICABLE RULING IN THE FACTS OF THIS CASE: *VELOSO V. CAMINADE*, 434 SCRA 1 (2004) OR *SIMBAJON V. ESTEBAN*, 312 SCRA 192 (1999), *DAWA V. ASA*, 292 SCRA 701 (1998) AND ANALOGOUS DECISIONS.[10]

Simply put, the question raised could be restated as follows: Did the acts of respondent constitute grave misconduct that warrant his dismissal from the service?

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[6] *Id.* at 39-53.

[7] CA *rollo*, pp. 353-367.

[8] A.M. No. RTJ-01-1655 (Formerly OCA IPI 91-1174-RTJ), July 8, 2004, 434 SCRA 1.

[9] *Rollo*, p. 37.

[10] *Id.* at 289.

Petitioner prays that we sustain the original decision of the Court of Appeals penalizing Nierras with dismissal, and not merely a six-month suspension without salary for immoral conduct.

For his part, respondent Nierras contends that the penalty to be meted to him should be equivalent to or even less than what has been meted by this Court on Judge Caminade in the case of *Veloso v. Caminade,* because in the said case more complaints of sexual harassments were filed against the judge and the standard of morality expected of a judge is more exacting than that expected of an ordinary officer of the government.

Misconduct refers to intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. To constitute an administrative offense, misconduct should relate to, or be connected with, the performance of the official functions and duties of a public officer. Grave misconduct is distinguished from simple misconduct in that the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest in grave misconduct.[11]

Otherwise stated, the misconduct is grave if it involves the additional element of corruption.[12] Corruption as an element of grave misconduct consists of the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[13]

In this case, we find that the element of corruption is absent. Nierras did not use his position as Acting General Manager of the Metro Carigara Water District in the act of sexually harassing Oña. In fact, it is established that Nierras and Oña are not employed or connected with the same agency or instrumentality

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[11] *Villanueva v. Court of Appeals*, G.R. No. 167726, July 20, 2006, 495 SCRA 824, 834-835.

[12] *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[13] H. BLACK, *BLACK'S LAW DICTIONARY* 311 (5th ed., 1979).

of the government. While this fact would not negate the possibility that sexual harassment could be committed by one against the other, the same would not warrant the dismissal of the offender because he did not use his position to procure sexual favors from Oña.

Under CSC Memorandum Circular No. 19, Series of 1994,[14] sexual harassment does not necessarily or automatically constitute "grave misconduct." Besides, under paragraph 2 of Section 1 thereof, sexual harassment constitutes a ground for disciplinary action under the offense of "Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, or Simple Misconduct."

Petitioner alleged that the Court of Appeals erred in applying the case of *Veloso v. Caminade* in imposing the proper penalty on Nierras since the facts of the case are different. Indeed, it should be noted that in the instant case, Oña and Nierras are not co-employees while in the *Caminade* case, the complainants were the subordinates of the offender. Also, in the *Caminade* case, there were several incidents of sexual harassment by a judge from whom the expected standard of morality was more exacting. But here, there was only one incident of sexual harassment. If a six-month suspension can be meted to a judge from whom the expected standard of morality is more exacting, *a fortiori*, the same or lesser penalty should be meted to Nierras. Moreover, in the *Caminade* case, the offender actually forcefully kissed and grabbed the complainants. However, in this case, Oña was able to flee from the arms of Nierras even before he could cause more harm to her. Under the circumstances of the present case, we agree with the Court of Appeals that suspension of the offender for a period of six (6) months without pay is sufficient penalty.

Clearly, there is no doubt that the act of Nierras constituted misconduct. However, it would be inappropriate to impose on him the penalty of dismissal from the service. Section 16, Rule

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[14] POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE, dated June 3, 1994, issued by the Civil Service Commission.

XIV of the Rules Implementing Book V of Executive Order No. 292 provides that in the determination of penalties to be imposed, mitigating and aggravating circumstances may be considered.[15] Considering the fact that this is the first time that Nierras is being administratively charged, it would be too harsh to impose on him the penalty of dismissal outright. Worth noting, in the case of *Civil Service Commission v. Belagan*,[16] although the Court found that the act of the offending public official constituted grave misconduct, still it did not impose the penalty of dismissal on him, considering the fact that it was his first offense.[17]

The law does not tolerate misconduct by a civil servant. It should be sanctioned. Public service is a public trust and whoever breaks that trust is subject to penalty. The issue, however, concerns the appropriate penalty. Dismissal with forfeiture of benefits, in our view, should not be imposed for all infractions involving misconduct, particularly when it is a first offense as in the instant case.[18] To conclude, given the circumstances of this case and of the precedents cited, we are in agreement that suspension of respondent for six (6) months without pay is sufficient penalty.

WHEREFORE, the petition is hereby *DISMISSED*. The assailed Decision dated July 27, 2004 of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and *Leonardo-de Castro, JJ.,* concur.

Nachura, J., no part. Filed pleading as Solicitor General.

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[15] *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 600.

[16] *Id*.

[17] *Id.* at 599-600.

[18] *Civil Service Commission v. Ledesma, supra* note 12, at 611.

SECOND DIVISION

[G.R. No. 166458. February 14, 2008]

MR. SERGIO VILLADAR, JR. & MRS. CARLOTA A. VILLADAR, *petitioners, vs.* **ELDON ZABALA and SAMUEL ZABALA, SR.,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; WHERE THE ISSUE OF POSSESSION IS CLOSELY INTERTWINED WITH THE ISSUE OF OWNERSHIP, THE COURT MAY PROVISIONALLY RESOLVE THE ISSUE OF OWNERSHIP FOR THE SOLE PURPOSE OF DETERMINING THE ISSUE OF POSSESSION. — Where the issue of possession in an unlawful detainer suit is closely intertwined with the issue of ownership, x x x the MTCC can provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. The judgment, however, is not conclusive in any action involving title or ownership and will not bar an action between the same parties respecting title to the land or building.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; ESTABLISHED IN CASE AT BAR. — [W]e find erroneous and without factual basis the appellate court's conclusion that Samuel, Sr. reserved his title to the land he sold to Estelita. Rather, the RTC aptly ruled that no evidence proved that Samuel, Sr. reserved his title. In respondents' complaint, position paper and joint affidavit with the MTCC, and even in their petition for review before the Court of Appeals, respondents never alleged that Samuel, Sr. reserved his title. While the price was payable on installment, there was *no agreement* between Estelita and Samuel, Sr. that the latter reserved his title, conditioning the transfer of ownership upon full payment of the price. Patently therefore, the oral contract was a contract *of* sale, not a contract *to* sell. It is in a contract to sell that ownership is, *by agreement*, reserved in the seller

[*] Also referred to as Samuel Zabala per TCT Nos. 78269 and 145183.

and is not to pass to the buyer until full payment of the purchase price.

3. ID.; CONTRACTS; RESCISSION OF CONTRACTS; VALID RESCISSION OR CANCELLATION OF CONTRACT OF SALE, ABSENT IN CASE AT BAR. — Anent Samuel, Sr.'s decision to cancel the sale and refusal to receive Estelita's payment of the balance of the price, we find that Samuel, Sr. neither notified Estelita by notarial act that he was rescinding the sale nor did he sue in court to rescind the sale. In addition, the records do not show Samuel, Sr.'s compliance with the requirements of the Realty Installment Buyer Protection Act — that actual cancellation takes place after 30 days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act and upon full payment of the cash surrender value to the buyer, which in this case is 50% of Estelita's total payments for more than two years. Thus, under the circumstances, Estelita's claim of ownership is valid, absent a valid rescission or cancellation of the contract of sale. Hence, she was properly within her rights when she allowed petitioners to occupy part of the land she bought upon her promise to sell it to them. Relatedly, respondents now concede that the land sold to Estelita is Lot No. 5095-B, but the disputed portion straddles Lot Nos. 5095-B and 5095-A. While Samuel, Sr. is the registered owner of Lot No. 5095-B, he has no cause to eject petitioners for alleged unlawful detainer since a finding of unlawfulness of petitioners' possession of the disputed portion depends upon the rescission of the contract of sale between Samuel, Sr. and Estelita. We hasten to add that rescission is not even absolute for the court may fix a period within which Estelita, if she is found in default, may be permitted to comply with her obligation.

4. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; CONCILIATION; PRE-CONDITION TO FILING OF COMPLAINT IN COURT; CASE AT BAR. — As regards Lot No. 5095-A, we find respondent Eldon's detainer suit premature for failure to exhaust all administrative remedies. As aptly pointed out by petitioners, Eldon did not comply with Section 412 of the Local Government Code (LGC), which sets forth a pre-condition to the filing of complaints in court, to wit: "SECTION 412. ***Conciliation***. — (a) *Pre-condition to filing of complaint in court*. — No complaint,

> petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto. x x x" Conformably with said Section 412, the MTCC should have dismissed Eldon's complaint. For our part, this Court is without authority to refuse to give effect to, and wipe off the statute books, Section 412 of the LGC insofar as this case and other cases governed by the Rules on Summary Procedure are concerned.

APPEARANCES OF COUNSEL

Alexander J. Cawit for petitioners.
Pepito & Pepito Law Offices for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Petitioners Mr. and Mrs. Sergio Villadar, Jr. appeal the Decision[1] dated November 28, 2003 of the Court of Appeals in CA-G.R. SP No. 71439 and the Resolution[2] dated December 1, 2004, denying the motion for reconsideration. The Court of Appeals had reversed the Decision[3] dated April 15, 2002 of the Regional Trial Court (RTC), Branch 58, Cebu City in Civil Case No. CEB-27050, and ordered petitioners to surrender possession of portions of Lot Nos. 5095-A and 5095-B to respondents Eldon Zabala and Samuel Zabala, Sr.

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[1] *Rollo*, pp. 32-37. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[2] *Id*. at 38-39-A. Penned by Associate Justice Marina L. Buzon, with Associate Justices Jose C. Mendoza and Fernanda Lampas-Peralta concurring.

[3] *Id*. at 43-49. Penned by Judge Gabriel T. Ingles.

The antecedent facts are as follows:

Respondent Samuel Zabala, Sr. was the owner of Lot No. 5095 covered by Transfer Certificate of Title (TCT) No. 78269,[4] located at San Nicolas, Cebu City, and comprising 438 square meters. On January 13, 1995, Samuel, Sr., together with his wife Maria Luz Zabala, sold one-half of Lot No. 5095 to his mother-in-law Estelita Villadar for ₱75,000 on installment basis. Except for a note of partial payment of ₱6,500,[5] no contract was executed nor was there an agreement on when Estelita shall pay all installments.

On February 28, 1997, Samuel, Sr. sold the other half of Lot No. 5095 to respondent Eldon Zabala. Lot No. 5095 was subdivided and upon cancellation of TCT No. 78269, Lot No. 5095-A under TCT No. 145182[6] was registered in Eldon's name. Lot No. 5095-B under TCT No. 145183[7] was registered in Samuel, Sr.'s name.

On April 20, 1997, Estelita made an additional payment of ₱22,500,[8] leaving a balance of only ₱36,500 after deducting all previous payments. Later, however, the spouses Samuel, Sr. and Maria Luz decided to cancel the sale after a confrontation with Estelita at the Office of the Barangay Captain of Barangay Basak, San Nicolas, Cebu City.

Samuel, Sr. together with his son Samuel Zabala, Jr. also filed a complaint for ejectment with the Office of the *Lupong Tagapamayapa* of Barangay Basak against Estelita's son, petitioner Sergio Villadar, Jr., who occupied one of the houses that stood on the property. On June 14, 1998, said office issued to Samuel, Sr. a certificate to file action after petitioner Sergio Villadar, Jr. failed to appear for conciliation.

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[4] CA *rollo*, p. 31.

[5] *Id.* at 61.

[6] *Id.* at 32.

[7] *Id.* at 33.

[8] *Id.* at 62.

On October 27, 1998, Eldon and Samuel, Sr. filed a Complaint[9] for unlawful detainer against petitioners Sergio Villadar, Jr. and his wife Carlota Alimurung before the Municipal Trial Court in Cities (MTCC), Branch 8, Cebu City. In their complaint, they alleged that they own Lot Nos. 5095-A and 5095-B, and that in the latter part of 1986, they allowed petitioners to stay in a vacant store on the lot out of pity, subject to the condition that petitioners would leave once respondents need the premises for the use of their own families. In January 1998, they demanded that petitioners vacate the store because they needed the store for the use of their children but petitioners refused to leave.

In their Answer,[10] petitioners claimed that one-half of Lot No. 5095 was sold on installment to Sergio Villadar, Jr.'s mother, Estelita Villadar, on January 13, 1995 for ₱75,000; that on January 13, 1995, Estelita made a downpayment of ₱6,500 and had an unpaid balance of only ₱36,500 as of April 20, 1997; that by virtue of the sale, Estelita became the owner of the premises where their house stood; that they derive their title from Estelita who promised and agreed to give them one-half of one-half of Lot No. 5095 after she has fully paid the price and obtained a separate title in her name; that they constructed a residential house, which now straddles Lot Nos. 5095-A and 5095-B because of respondents' wrongful subdivision of Lot No. 5095; that Estelita tried to tender the balance of the purchase price, but Samuel, Sr. unjustifiably refused to receive the payment; that because of such refusal, Estelita and Sergio Villadar, Jr. sought the intervention of the *Lupon* Authority of Barangay Basak, San Nicolas, Cebu City but no settlement was reached; that assuming that they and Estelita are adjudged to have an inferior right over one-half of the lot, they are builders in good faith and they should be allowed to retain the lot until they are paid or reimbursed the amount of ₱80,000, which is the value of the house they built on the premises.

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[9] Records, pp. 1-4.

[10] *Id*. at 28-36.

On August 27, 2001, the MTCC dismissed the complaint.[11] The MTCC ruled that petitioners could not be deprived of their possession of the disputed portion because one-half of Lot No. 5095 had already been sold in 1995 to Estelita Villadar, who was the source of petitioners' right to possess it. The dispositive portion of the decision states:

> WHEREFORE, upon the premises, judgment is hereby rendered against [p]laintiffs and this case is DISMISSED; [de]fendants are hereby granted to recover the costs of this litigation in the sum of ₱10,000.00 from [p]laintiffs who are hereby directed to pay the same.
>
> SO ORDERED.[12]

Respondents Eldon and Samuel, Sr. appealed to the RTC which affirmed the MTCC's ruling.

Upon appeal, the Court of Appeals in a Decision dated November 28, 2003 reversed the rulings of the MTCC and RTC. The Court of Appeals ruled that although there was an oral agreement between Samuel Zabala, Sr. and Estelita Villadar for the sale of one-half of Lot No. 5095, Samuel Zabala, Sr. had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. The pertinent portions of the Court of Appeals' decision state:

x x x x x x x x x

> It is undisputed that . . . there was a verbal agreement between petitioner Samuel Zabala, Sr. and the respondents for the sale of Lot No. 50[95]-B for ₱75,000.00 on January 13, 1995. The sale of Lot No. 5095-B, although not in writing, had been perfected as the parties had agreed upon the object of the contract, which was Lot 5095-B, and the price, which was ₱75,000.00 (**Article 1475, Civil Code of the Philippines**). Similarly, We sustain the validity of the oral sale as no written form is really required for the validity of a contract of sale (**Article 1483, Civil Code of the Philippines**). But, as correctly observed by the trial court, the term or manner of

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[11] *Id.* at 105-107. Penned by Judge Edgemelo C. Rosales.

[12] *Id.* at 107.

payment of the purchase price had not been agreed upon by the parties in which case petitioner Samuel Zabala, Jr. should seek the intervention of the court to fix the period when Estelita *vda. de* Villadar should pay in full the consideration of the sale. Where the period has been fixed by the court and Estelita refused to pay the remaining balance of ₱36,500.00, that would be the opportune time for petitioner Samuel Zabala, Sr. to cause the rescission of the oral contract. As it is, however, petitioner Samuel Zabala, Sr. could not rescind or cancel the contract on the ground that Estelita failed to pay the remaining balance of the purchase price because he had no cause for cancellation or rescission yet in view of fact that no period had been agreed upon by him and Estelita when the ₱36,500.00 should be paid. Thus, unless the contract of sale is rescinded, it remains to be valid.

On a different light, however, We note and We are inclined to believe, based on the evidence submitted to Us and in determining the intentions of petitioner Samuel Zabala, Sr. and the respondents spouses, that the sale, being one on installment basis, petitioner Samuel Zabala, [Sr.] had reserved title to the property in his name until full payment of the purchase price had been made by Estelita. This explains why title of Lot No. 5095-B, specifically TCT No. 145183, was registered in his name when Lot No. 5095 was divided into two lots and Estelita had not sought the registration of the lot in her name. Although respondents occupied the store or house on the common boundary of [Lot Nos.] 50[95]-A and 50[95]-B, their occupation or possession did not constitute delivery of the land subject of the oral contract of sale so as to have effectively transferred ownership thereof to Estelita. Therefore, even assuming that respondents were the ones who constructed the house or store on Lot No. 50[95]-B, they had no right to construct any structure thereon because their mother, Estelita, did not own the land until she had fully paid the consideration of the sale.

As no right was acquired by the respondents better than the right pertaining to Estelita, the occupancy and possession by the respondents of the subject land was merely tolerated by the owner, herein plaintiff-petitioner Samuel Zabala, Sr. Similarly, respondents did not have the right to possess or occupy that portion of the land belonging to petitioner Eldon Zabala. Their occupation with respect to that portion was, likewise, merely tolerated by the owner and, thus, it was the duty of the respondents to surrender possession thereof upon demand by petitioner Eldon. From July 23, 1998 then, when a formal demand (*Rollo*, p. 63) was made upon the respondents to vacate the premises,

the possession of the respondents had become unlawful and they were subject to ejectment.

Respondents could not claim that they were builders in good faith of the house. From their allegations in their Answer with Counterclaim (par. 2.3), respondent Sergio Villadar, Jr. knew and admitted that Lot No. 5095-B was not yet fully paid and a separate title thereto had not yet been issued in the name of Estelita (*Rollo*, p. 55) from whom he and his wife allegedly derived their title. Being builders in bad faith, they cannot, as a matter of right, recover the value of the house or the improvements thereon, if any, from the petitioners, much less retain possession of the premises (**Article 449, Civil Code of the Philippines**). Respondents have no right, whatsoever, except the right to be reimbursed for necessary expenses which they had incurred for the preservation of both portions of [Lot] Nos. 50[95]-A and 50[95]-B (**Article 452, Civil Code of the Philippines**) occupied by them.

WHEREFORE, in view of the foregoing, the petition is **GIVEN DUE COURSE**. The Decision dated April 15, 2002 of the Regional Trial Court, Branch 58, Cebu City affirming the Decision dated August 27, 2001 of the Municipal Trial Court in Cities, Branch 8, Cebu City, is hereby **REVERSED** and **SET ASIDE**, and another one entered ordering defendants-respondents to surrender the physical and material possession of that portion of Lot No. 50[95]-A and Lot No. 50[95]-B upon which their house was constructed to petitioners Samuel Zabala, Sr. and Eldon Zabala.

SO ORDERED.[13]

On December 1, 2004, the Court of Appeals likewise denied petitioners' motion for reconsideration. Hence, this petition.

Petitioners raise the following issues in their Memorandum:

I.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENTS' PETITION FOR REVIEW AND RENDERING A DECISION THERE[O]N, INSTEAD OF DISMISSING THE SAME FOR VIOLATION OF SEC. 2(d) OF RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE.

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[13] *Rollo*, pp. 35-37.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, AND MISAPPREHENSION OF FACTS, IN RULING THAT THERE WAS NO DELIVERY OF POSSESSION TO ESTELITA VILLADAR OF THE ½ PORTION OF LOT [NO.] 5095 SOLD TO HER IN PETITIONERS' EXH. "1" BY RESPONDENT SAMUEL ZABALA[,] SR. AND WIFE, WHICH IS THE RECEIPT DATED JANUARY 13, 1995 OF THE PARTIAL PAYMENT OF ESTELITA VILLADAR OF ITS CONSIDERATION ADMITTED BY RESPONDENT SAMUEL ZABALA SR. [SIC]

III.

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN HOLDING THAT ESTELITA VILLADAR DID NOT OWN THE LAND WHERE HER AND PETITIONERS' HOUSES STAND BECAUSE SHE HAD NOT FULLY PAID THE CONSIDERATION OF THE SALE.

IV.

WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING . . . THAT PETITIONERS' OCCUPANCY OF THE ½ PREMISES OF LOT [NO.] 5095 WAS BY MERE TOLERANCE OF THE RESPONDENTS [WAS RIGHT].

V.

WHETHER OR NOT PETITIONERS ARE EJECTIBLE [SIC] FROM THE PREMISES OF LOT [NO.] 5095.

VI.

ASSUMING THAT THEY ARE, WHETHER OR NOT THE HON. COURT OF APPEALS' HOLDING [WAS] RIGHT THAT PETITIONERS WERE NOT BUILDERS IN GOOD FAITH OF THEIR RESIDENTIAL HOUSE IN THE PREMISES AT A COST OF ₱80,000.00 (P. 3. CA'S DECISION — ANNEX "A", PETITION); HENCE NOT REIMBURSABLE FOR SAID EXPENSES THEREOF, AND HAVE NO RIGHT OF RETENTION.

VII.

WHETHER THE COURT *A QUO* WAS RIGHT OR NOT IN NOT DISMISSING OUTRIGHTLY THE [RESPONDENTS'] COMPLAINT, FOR NON-COMPLIANCE WITH THE *KATARUNGANG*

PAMBARANGAY LAW AND THIS HON. COURT'S ADM. CIR. NO. 14-93, AND RULE 16, SEC. 1 (j) OF THE 1997 RULES OF CIVIL PROCEDURE.

VIII.

WHETHER OR NOT THE RESPONDENTS' COMPLAINT AT THE COURT *A QUO* IS DISMISSABLE UNDER THE RULING OF THE SUPREME COURT IN THE CASE OF *SARM*[*I*]*ENTO V. COURT OF APPEALS*, G.R. NO. 116192, NOV. 16, 1995, ON THE GROUND THAT IT IS NOT COGNIZABLE BY THE SAID COURT.[14]

Essentially, the main issue for our resolution is whether the appellate court erred in reversing the RTC's ruling that the respondents can not validly eject petitioners.

Petitioners argue that Estelita owns one-half of Lot No. 5095 and that their possession of the disputed portion was based on their agreement with Estelita, not upon respondents' tolerance. Petitioners also add that they cannot be summarily ejected from the disputed portion without first resolving the ownership of the land sold to Estelita in an *accion publiciana*.[15]

Respondents counter that since Estelita failed to pay the full price within two years, Samuel, Sr., who reserved his title until full payment, retained ownership. Respondents insist that petitioners must vacate upon demand since their possession is merely tolerated and they have no better right than Estelita. [16]

Prefatorily, we restate a now settled doctrine.[17] Where the issue of possession in an unlawful detainer suit is closely intertwined with the issue of ownership, as in this case, the MTCC can provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.[18] The

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[14] *Id*. at 137.

[15] *Id*. at 145-146.

[16] *Id*. at 111, 114-115.

[17] *Heirs of Basilisa Hernandez v. Vergara, Jr.*, G.R. No. 166975, September 15, 2006, 502 SCRA 163, 169.

[18] *Id*. at 168-169; RULES OF COURT, Rule 70, Sec. 16.

judgment, however, is not conclusive in any action involving title or ownership and will not bar an action between the same parties respecting title to the land or building.[19]

After carefully examining the records of this case, we are constrained to reverse the appellate court's decision. *First*, we find erroneous and without factual basis the appellate court's conclusion that Samuel, Sr. reserved his title to the land he sold to Estelita. Rather, the RTC aptly ruled that no evidence proved that Samuel, Sr. reserved his title. In respondents' complaint,[20] position paper[21] and joint affidavit[22] with the MTCC, and even in their petition for review[23] before the Court of Appeals, respondents never alleged that Samuel, Sr. reserved his title. While the price was payable on installment, there was *no agreement* between Estelita and Samuel, Sr. that the latter reserved his title, conditioning the transfer of ownership upon full payment of the price.[24]

SEC. 16. *Resolving defense of ownership.* — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

[19] RULES OF COURT, Rule 70, Sec. 18.

SEC. 18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.* — The judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.

x x x x x x x x x

[20] Records, pp. 1-4.

[21] *Id.* at 60-64.

[22] *Id.* at 65.

[23] CA *rollo*, pp. 8-19.

[24] See *Agag v. Alpha Financing Corporation*, G.R. No. 154826, July 31, 2003, 407 SCRA 602, 608; *Heirs of Jesus M. Mascuñana v. Court of Appeals*, G.R. No. 158646, June 23, 2005, 461 SCRA 186, 203-204; *Dignos v. Court of Appeals*, No. 59266, February 29, 1988, 158 SCRA 375, 382.

Patently therefore, the oral contract was a contract *of* sale, not a contract *to* sell. It is in a contract to sell that ownership is, *by agreement*, reserved in the seller and is not to pass to the buyer until full payment of the purchase price.[25] Notably, the Court of Appeals stated that unless rescinded, the perfected *contract of sale* remains valid.[26] Incidentally, this statement reveals the inconsistency of the Court of Appeals in finding that Samuel, Sr. *reserved* his title and also saying that the transaction was a *contract of sale*. Worse, despite the parties' common submission that the sale was between *Estelita* and Samuel, Sr., the Court of Appeals misappreciated that it was between *petitioners* and Samuel, Sr.[27]

We also note respondents' inconsistent positions as this case was tried and appealed. Their complaint was silent on the sale to Estelita. As they appealed to the RTC, respondents advanced a new but erroneous theory that the sale to Estelita was actually an "oral agreement to sell,"[28] such that *by agreement* ownership was reserved by seller Samuel, Sr.[29] Respondents soon abandoned that theory in their petition before the Court of Appeals and argued that the "sale agreement" in 1995 with Estelita was immaterial in this case.[30] Now before us, respondents resurrect their contention in the RTC and echo the appellate court's error that Samuel, Sr. reserved his title.

Second, the records belie respondents' allegation that Estelita's installments were payable in two years. We note that on April 20, 1997, or more than two years after Estelita's initial payment of ₱6,500 on January 13, 1995,[31] Maria Luz accepted Estelita's additional payment of ₱22,500.[32]

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[25] *Agag v. Alpha Financing Corporation, id.*

[26] *Rollo*, pp. 35-36.

[27] *Id.* at 35.

[28] Records, p. 134.

[29] *Id.* at 135.

[30] CA *rollo*, p. 16.

[31] Records, p. 37.

[32] *Id.* at 38.

Anent Samuel, Sr.'s decision to cancel the sale and refusal to receive Estelita's payment of the balance of the price,[33] we find that Samuel, Sr. neither notified Estelita by notarial act that he was rescinding the sale nor did he sue in court to rescind the sale.[34] In addition, the records do not show Samuel, Sr.'s compliance with the requirements of the Realty Installment Buyer Protection Act — that actual cancellation takes place after 30 days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act and upon full payment of the cash surrender value to the buyer, which in this case is 50% of Estelita's total payments for more than two years.[35]

Thus, under the circumstances, Estelita's claim of ownership is valid, absent a valid rescission or cancellation of the contract of sale. Hence, she was properly within her rights when she allowed petitioners to occupy part of the land she bought upon her promise to sell it to them. Relatedly, respondents now concede

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[33] *Id*. at 104; *rollo*, pp. 128-129.

[34] *Dignos v. Court of Appeals*, *supra* note 24, at 383.

[35] Republic Act No. 6552 — AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, approved on September 14, 1972.

SEC. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

x x x x x x x x x

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer. (Underscoring supplied.)

x x x x x x x x x

that the land sold to Estelita is Lot No. 5095-B,[36] but the disputed portion straddles Lot Nos. 5095-B and 5095-A.

While Samuel, Sr. is the registered owner of Lot No. 5095-B, he has no cause to eject petitioners for alleged unlawful detainer since a finding of unlawfulness of petitioners' possession of the disputed portion depends upon the rescission of the contract of sale between Samuel, Sr. and Estelita.[37] We hasten to add that rescission is not even absolute for the court may fix a period within which Estelita, if she is found in default, may be permitted to comply with her obligation.[38]

As regards Lot No. 5095-A, we find respondent Eldon's detainer suit premature for failure to exhaust all administrative remedies.[39] As aptly pointed out by petitioners,[40] Eldon did not comply[41] with Section 412 of the Local Government Code (LGC), which sets forth a pre-condition to the filing of complaints in court, to wit:

> SECTION 412. ***Conciliation***. — (a) *Pre-condition to filing of complaint in court*. — No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the lupon secretary or *pangkat* secretary as attested to by the *lupon* or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.
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> x x x x x x x x x

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[36] *Rollo*, p. 114.

[37] *Villena v. Chavez*, G.R. No. 148126, November 10, 2003, 415 SCRA 33, 41.

[38] *Dignos v. Court of Appeals*, *supra* note 24, at 383-384.

[39] *Berba v. Pablo*, G.R. No. 160032, November 11, 2005, 474 SCRA 686, 696, 698.

[40] Records, pp. 82, 154; *rollo*, p. 148.

[41] Records, p. 7. Only Samuel, Sr. and Samuel, Jr. had complied with Section 412.

Conformably with said Section 412, the MTCC should have dismissed Eldon's complaint. For our part, this Court is without authority to refuse to give effect to, and wipe off the statute books, Section 412 of the LGC insofar as this case and other cases governed by the Rules on Summary Procedure are concerned.[42]

Moreover, we are unconvinced of Eldon's claim that "out of pity" he also allowed petitioners to stay on the disputed portion in 1986 because he only bought what is now Lot No. 5095-A in 1997.

WHEREFORE, we *GRANT* the petition and *SET ASIDE* the assailed Decision dated November 28, 2003 and Resolution dated December 1, 2004 of the Court of Appeals in CA-G.R. SP No. 71439. The appellate court erred in reversing the RTC's Order to respect petitioners' possession of the disputed property. Respondents' unlawful detainer complaint is hereby *DISMISSED*, without prejudice to any appropriate suit between the parties respecting title to the disputed portion.

Costs against respondents.

SO ORDERED.

Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

Tinga, J., in the result.

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[42] *Berba v. Pablo, supra* note 39, at 699.

SECOND DIVISION

[G.R. No. 169877. February 14, 2008]
(Formerly G.R. No. 159500)

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **AMADOR SEGOBRE *y* QUIJANO,**[*] *defendant and appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON, WHEN AFFIRMED BY THE APPELLATE COURT, ARE BINDING AND CONCLUSIVE ON THE SUPREME COURT. — The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under cross examination. If found positive and credible by the trial court, the testimony of a lone eyewitness is sufficient to support a conviction. The trial court's findings on such matters, when affirmed by the appellate court, are binding and conclusive on this Court, unless it is shown that the court *a quo* has plainly overlooked substantial facts which, if considered, might affect the result of the case.

2. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE THAT THE PRINCIPAL WITNESS FOR THE PROSECUTION IS ACTUATED BY IMPROPER MOTIVE, HIS TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT. — Where there is no evidence 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.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED. — For treachery to qualify the crime to murder, the prosecution must prove that (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive

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[*] Also referred to as "Mang Ador" in other parts of the records.

or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. x x x Treachery exists even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself, for what is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

4. ID.; ID.; EVIDENT PREMEDITATION; REQUISITES. — For evident premeditation to be appreciated, the following requisites must be shown: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such a determination and the actual execution to allow the accused time to reflect upon the consequences of his act.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; GRANTED IN CASE AT BAR. — Following current jurisprudence, we find the award of civil indemnity in the amount of ₱50,000 for the death of Crescini correct and proper without any need of proof other than the commission of the crime. We also affirm the award of moral damages of ₱50,000 in accordance with our ruling in *People v. Ortiz.*

6. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN THE COMMISSION OF THE OFFENSE IS ATTENDED BY AN AGGRAVATING CIRCUMSTANCE, WHETHER ORDINARY OR QUALIFYING. — Exemplary damages of ₱25,000 is likewise warranted because of the presence of the aggravating circumstance of treachery. Exemplary damages are awarded when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated May 26, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00882 which affirmed with modification the Decision[2] dated October 30, 2002 of the Regional Trial Court of Antipolo City, Branch 73, in Crim. Case No. 97-13850 finding appellant Amador Segobre *y* Quijano guilty beyond reasonable doubt of the crime of murder.

In an Information dated March 17, 1997, appellant was charged with murder committed as follows:

x x x x x x x x x

That on or about the 15th 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 intent to kill, armed with a butcher knife, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Roberto Crescini[3] with the said butcher knife on the chest, thereby [inflicting] upon the latter stab wound which directly caused his death.

CONTRARY TO LAW.[4]

When arraigned, appellant pleaded not guilty. Thereafter, trial ensued. The prosecution presented two witnesses, namely, Lester C. Villafaña, the eyewitness; and Dr. Ma. Cristina B. Freyra, the medico-legal expert who conducted the autopsy on the cadaver of the victim.

Villafaña testified that on March 15, 1997, at around 5:00 p.m., he was walking along Crisostomo Street, Antipolo City,

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[1] *Rollo*, pp. 3-11. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Regalado E. Maambong and Vicente Q. Roxas concurring.

[2] CA *rollo*, pp. 15-18. Penned by Executive Judge Mauricio M. Rivera.

[3] Also referred to as "Mang Berting" in other parts of the records.

[4] Records, pp. 1-2.

when he saw appellant standing at the nearby electric post. Two minutes later, he saw appellant block the victim Roberto Crescini, who was coming from Sumulong Highway on a bicycle. At a distance of 5½ meters, Villafaña saw appellant grab Crescini's right shoulder with his left hand and stab Crescini on the right chest. After the incident, appellant ran away. A commotion then ensued. Thereafter, Villafaña left. The next morning, he learned that Crescini had died in the hospital.[5]

Dr. Freyra found that there was only one fatal wound caused by a single bladed weapon. She testified that this was a stab wound on the right chest inflicted by an assailant who, if right-handed, was positioned at the extreme right of the victim, and if left-handed, would be in front of the victim.[6]

Appellant denied the charges against him. He narrated a different version of events: He testified that on March 15, 1997 at "around 4:00 p.m.," he was about to leave his house on Crisostomo Street, Mayamot, Antipolo City, when a boy named Alexandro Mariño informed him that a certain Berting Crescini "met an accident around 5:00 o'clock (sic) in the afternoon." After the conversation, he proceeded to the market. While waiting for a ride on Crisostomo Street, near the Texas Cockpit Arena, he saw the boy Mariño throw a knife in front of him. Seeing that it was beautifully crafted, he picked up the knife and proceeded to go to the market. But on his way, the police authorities arrested him as the suspect for the killing of Crescini. He also denied he knew Crescini, but admitted that his house and Crescini's house were just separated by a wall.[7]

On October 30, 2002, the trial court convicted appellant of the crime of murder and found the circumstances of treachery and evident premeditation to have attended the killing. The decretal portion of the decision reads,

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[5] TSN, August 29, 1997, pp. 3-8.

[6] TSN, November 6, 1997, pp. 7-8.

[7] TSN, October 21, 1999, pp. 3-14; TSN, October 10, 2000, pp. 3-7; TSN, March 20, 2001, pp. 2-9.

WHEREFORE, premises considered, accused AMADOR SEGOBRE is hereby found guilty of Murder beyond reasonable doubt and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.

The accused is further ordered to indemnify the heirs of Roberto Crescini in the amount of ₱50,000.

SO ORDERED.[8]

Following *People v. Mateo*,[9] the case was referred to the Court of Appeals for review. [10]

The Court of Appeals affirmed appellant's conviction for murder, but appreciated the circumstance of treachery only. The Court of Appeals held,

x x x x x x x x x

The qualifying circumstance of evident premeditation, however, cannot be appreciated in the instant case, as there was no proof as to how and when the plan to kill the victim was hatched or what time had passed before the killing was carried out. Nonetheless, the qualifying circumstance of treachery suffices to qualify the offense to murder.

x x x x x x x x x

WHEREFORE, the decision of the Regional Trial Court, Branch 73, Antipolo City is **AFFIRMED** with **MODIFICATION**. Appellant is ordered to pay the heirs of Roberto Crescini the amount of ₱50,000.00 as moral damages in addition to the amount of ₱50,000.00 awarded as civil indemnity by the trial court.[11] (Citations omitted.)

On February 8, 2006, this Court required the parties to submit their respective supplemental briefs. The parties, however, separately manifested that they are no longer filing supplemental briefs as they have fully argued their respective positions in their briefs before the Court of Appeals.

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[8] CA *rollo,* p. 18.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] *Rollo,* p. 2.

[11] *Id.* at 10.

Appellant in his brief assigns the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

II.

GRANTING *ARGUENDO* THAT ACCUSED-APPELLANT WAS GUILTY OF STABBING ROBERTO CRESCINI, THE COURT *A QUO* ERRED IN FINDING HIM GUILTY OF MURDER DESPITE THE PROSECUTION'S FAILURE TO PROVE THE PRESENCE OF TREACHERY AND EVIDENT PREMEDITATION.[12]

Simply put, the issues are: (1) Did the trial court err in convicting appellant of the crime charged? and (2) Did evident premeditation and treachery attend the killing?

Appellant avers that the prosecution failed to prove his guilt beyond reasonable doubt, and that the trial court relied on the weakness of his defenses of alibi and denial. Appellant also avers that, assuming for the sake of argument that he was guilty of stabbing the victim, the court still erred in convicting him of murder as the prosecution failed to prove the presence of treachery and evident premeditation.

The Office of the Solicitor General (OSG), for the State, stresses that appellant was positively identified as the malefactor by Villafaña who witnessed the incident from a distance of only 5½ meters. It adds that appellant's testimonies were inconsistent. His defense of denial and alibi could not prevail over his positive identification by the eyewitness to the incident. The OSG also maintains that treachery attended the killing of Crescini as appellant employed means which rendered Crescini unable to resist appellant's attack.

We shall now rule on the issues raised by appellant.

The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because

[12] CA *rollo*, p. 35.

of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under cross examination.[13] If found positive and credible by the trial court, the testimony of a lone eyewitness is sufficient to support a conviction.[14] The trial court's findings on such matters, when affirmed by the appellate court, are binding and conclusive on this Court, unless it is shown that the court *a quo* has plainly overlooked substantial facts which, if considered, might affect the result of the case.[15]

Here, both the trial and appellate courts gave credence to Villafaña's testimony identifying appellant as the perpetrator of the crime. Villafaña's straightforward and candid narration of the incident was regarded as positive and credible evidence, sufficient to convict appellant. Moreover, no evil motive had been imputed against Villafaña for testifying against appellant. Where there is no evidence 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.

As to the attending circumstances, only treachery was held present by both the trial and the appellate courts. For treachery to qualify the crime to murder, the prosecution must prove that (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted.[16]

In this case, Crescini was on a bicycle and making a turn from Sumulong Highway to Crisostomo Street when appellant blocked his way without warning and suddenly stabbed him.

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[13] *People v. Ciron, Jr.*, G.R. No. 139409, March 18, 2002, 379 SCRA 376, 382.

[14] *People v. Hillado*, G.R. No. 122838, May 24, 1999, 307 SCRA 535, 549.

[15] *Id*. at 546.

[16] *People v. Bermas*, G.R. Nos. 76416 and 94312, July 5, 1999, 309 SCRA 741, 778.

At that time, Crescini had both his hands on the handlebars such that he could not resist any sudden attack. This is the essence of treachery — the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.[17] Treachery exists even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself, for what is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[18] Hence, in this case, we agree that treachery was present in the commission of the crime.

But as to the circumstance of evident premeditation, we agree with the Court of Appeals that this circumstance could not be appreciated in connection with the killing of Crescini, contrary to the finding of the trial court. For evident premeditation to be appreciated, the following requisites must be shown: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such a determination and the actual execution to allow the accused time to reflect upon the consequences of his act.[19] None of these requisites have been shown from the facts of this case. The records do not show the time and date when appellant resolved to commit the crime. Absent this first requisite, the lapse of time as stated in the third requisite cannot be proved.[20] The second element cannot likewise be proved, absent any showing that appellant performed acts manifestly indicating that he clung to his determination of killing Crescini.

Following current jurisprudence, we find the award of civil indemnity[21] in the amount of ₱50,000 for the death of Crescini correct and proper without any need of proof other than the commission of the crime. We also affirm the award of moral

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[17] *Id*.

[18] *People v. Dadivo*, G.R. No. 143765, July 30, 2002, 385 SCRA 449, 455.

[19] *People v. Ciron, Jr., supra* note 13, at 384.

[20] *Rabor v. People*, G.R. No. 140344, August 18, 2000, 338 SCRA 381, 389.

[21] *People v. Escote*, G.R. No. 151834, June 8, 2004, 431 SCRA 345, 352-353.

damages of ₱50,000 in accordance with our ruling in *People v. Ortiz*.[22] Exemplary damages of ₱25,000 is likewise warranted because of the presence of the aggravating circumstance of treachery. Exemplary damages are awarded when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.[23]

WHEREFORE, the instant appeal is *DENIED***.** The Decision dated May 26, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00882 finding appellant Amador Segobre *y* Quijano guilty beyond reasonable doubt of the crime of Murder is *AFFIRMED*. Appellant is sentenced to suffer the penalty of *Reclusion Perpetua* and is ORDERED to pay the heirs of the victim, Roberto Crescini, ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 170287. February 14, 2008]

ALABANG COUNTRY CLUB, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, ALABANG COUNTRY CLUB INDEPENDENT EMPLOYEES UNION, CHRISTOPHER PIZARRO, MICHAEL BRAZA, and NOLASCO CASTUERAS,** *respondents.*

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[22] G.R. No. 133814, July 17, 2001, 361 SCRA 274.

[23] *People v. Escote, supra* at 353.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; GROUNDS. — Under the Labor Code, an employee may be validly terminated on the following grounds: (1) just causes under Art. 282; (2) authorized causes under Art. 283; (3) termination due to disease under Art. 284; and (4) termination by the employee or resignation under Art. 285. Another cause for termination is dismissal from employment due to the enforcement of the union security clause in the CBA.

2. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSE; UNION SHOP AND MEMBERSHIP SHOP, WHEN PRESENT. — There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. Termination of employment by virtue of a union security clause embodied in a CBA is recognized and accepted in our jurisdiction. This practice strengthens the union and prevents disunity in the bargaining unit within the duration of the CBA. By preventing member disaffiliation with the threat of expulsion from the union and the consequent termination of employment, the authorized bargaining representative gains more numbers and strengthens its position as against other unions which may want to claim majority representation.

3. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT BY ENFORCING THE UNION SECURITY CLAUSE; WHEN PROPER. — In terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the union's decision to expel the employee from the union. These requisites constitute just

cause for terminating an employee based on the CBA's union security provision.

APPEARANCES OF COUNSEL

Salvador C. Medialdea for petitioner.
Patricio L. Boncayao for C. Pizarro, *et al.*
Antonio R. Canlas for Alabang Country Club Independent Employees Union.

D E C I S I O N

VELASCO, JR., *J.*:

Petitioner Alabang Country Club, Inc. (Club) is a domestic non-profit corporation with principal office at Country Club Drive, Ayala Alabang, Muntinlupa City. Respondent Alabang Country Club Independent Employees Union (Union) is the exclusive bargaining agent of the Club's rank-and-file employees. In April 1996, respondents Christopher Pizarro, Michael Braza, and Nolasco Castueras were elected Union President, Vice-President, and Treasurer, respectively.

On June 21, 1999, the Club and the Union entered into a Collective Bargaining Agreement (CBA), which provided for a Union shop and maintenance of membership shop.

The pertinent parts of the CBA included in Article II on Union Security read, as follows:

ARTICLE II
UNION SECURITY

SECTION 1. CONDITION OF EMPLOYMENT. All regular rank-and-file employees, who are members or subsequently become members of the UNION shall maintain their membership in good standing as a condition for their continued employment by the CLUB during the lifetime of this Agreement or any extension thereof.

SECTION 2. [COMPULSORY] UNION MEMBERSHIP FOR NEW REGULAR RANK-AND-FILE EMPLOYEES

a) New regular rank-and-file employees of the Club shall join the UNION within five (5) days from the date of their appointment as regular employees as a condition for their continued employment during the lifetime of this Agreement, otherwise, their failure to do so shall be a ground for dismissal from the CLUB upon demand by the UNION.

b) The Club agrees to furnish the UNION the names of all new probationary and regular employees covered by this Agreement not later than three (3) days from the date of regular appointment showing the positions and dates of hiring.

x x x x x x x x x

SECTION 4. TERMINATION UPON UNION DEMAND. Upon written demand of the UNION and after observing due process, the Club shall dismiss a regular rank-and-file employee on any of the following grounds:

(a) Failure to join the UNION within five (5) days from the time of regularization;
(b) Resignation from the UNION, except within the period allowed by law;
(c) Conviction of a crime involving moral turpitude;
(d) Non-payment of UNION dues, fees, and assessments;
(e) Joining another UNION except within the period allowed by law;
(f) **Malversation of union funds**;
(g) Actively campaigning to discourage membership in the UNION; and
(h) Inflicting harm or injury to any member or officer of the UNION.

It is understood that the UNION shall hold the CLUB free and harmless [sic] from any liability or damage whatsoever which may be imposed upon it by any competent judicial or quasi-judicial authority as a result of such dismissal and the UNION shall reimburse the CLUB for any and all liability or damage it may be adjudged.[1] (Emphasis supplied.)

Subsequently, in July 2001, an election was held and a new set of officers was elected. Soon thereafter, the new officers

[1] *Rollo*, pp. 62-63.

conducted an audit of the Union funds. They discovered some irregularly recorded entries, unaccounted expenses and disbursements, and uncollected loans from the Union funds. The Union notified respondents Pizarro, Braza, and Castueras of the audit results and asked them to explain the discrepancies in writing.[2]

Thereafter, on October 6, 2001, in a meeting called by the Union, respondents Pizarro, Braza, and Castueras explained their side. Braza denied any wrongdoing and instead asked that the investigation be addressed to Castueras, who was the Union Treasurer at that time. With regard to his unpaid loans, Braza claimed he had been paying through monthly salary deductions and said the Union could continue to deduct from his salary until full payment of his loans, provided he would be reimbursed should the result of the initial audit be proven wrong by a licensed auditor. With regard to the Union expenses which were without receipts, Braza explained that these were legitimate expenses for which receipts were not issued, *e.g.* transportation fares, food purchases from small eateries, and food and transportation allowances given to Union members with pending complaints with the Department of Labor and Employment, the National Labor Relations Commission (NLRC), and the fiscal's office. He explained that though there were no receipts for these expenses, these were supported by vouchers and itemized as expenses. Regarding his unpaid and unliquidated cash advances amounting to almost Php20,000, Braza explained that these were not actual cash advances but payments to a certain Ricardo Ricafrente who had loaned Php200,000 to the Union.[3]

Pizarro, for his part, blamed Castueras for his unpaid and uncollected loan and cash advances. He claimed his salaries were regularly deducted to pay his loan and he did not know why these remained unpaid in the records. Nonetheless, he likewise agreed to continuous salary deductions until all his accountabilities were paid.[4]

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[2] *Id.* at 74.

[3] *Id.* at 160-161.

[4] *Id.* at 161.

Castueras also denied any wrongdoing and claimed that the irregular entries in the records were unintentional and were due to inadvertence because of his voluminous work load. He offered that his unpaid personal loan of Ph₱27,500 also be deducted from his salary until the loans were fully paid. Without admitting any fault on his part, Castueras suggested that his salary be deducted until the unaccounted difference between the loans and the amount collected amounting to a total of Ph₱22,000 is paid.[5]

Despite their explanations, respondents Pizarro, Braza, and Castueras were expelled from the Union, and, on October 16, 2001, were furnished individual letters of expulsion for malversation of Union funds.[6] Attached to the letters were copies of the *Panawagan ng mga Opisyales ng Unyon* signed by 37 out of 63 Union members and officers, and a Board of Directors' Resolution[7] expelling them from the Union.

In a letter dated October 18, 2001, the Union, invoking the Security Clause of the CBA, demanded that the Club dismiss respondents Pizarro, Braza, and Castueras in view of their expulsion from the Union.[8] The Club required the three respondents to show cause in writing within 48 hours from notice why they should not be dismissed. Pizarro and Castueras submitted their respective written explanations on October 20, 2001, while Braza submitted his explanation the following day.

During the last week of October 2001, the Club's general manager called respondents Pizarro, Braza, and Castueras for an informal conference inquiring about the charges against them. Said respondents gave their explanation and asserted that the Union funds allegedly malversed by them were even over the total amount collected during their tenure as Union officers—Ph₱120,000 for Braza, Ph₱57,000 for Castueras, and Ph₱10,840 for Pizarro, as against the total collection from April 1996 to December 2001 of only Ph₱102,000. They claimed the charges

[5] *Id*. at 161-163.

[6] *Id*. at 82-84.

[7] *Id*. at 79-81.

[8] *Id*. at 73.

are baseless. The general manager announced he would conduct a formal investigation.

Nonetheless, after weighing the verbal and written explanations of the three respondents, the Club concluded that said respondents failed to refute the validity of their expulsion from the Union. Thus, it was constrained to terminate the employment of said respondents. On December 26, 2001, said respondents received their notices of termination from the Club.[9]

Respondents Pizarro, Braza, and Castueras challenged their dismissal from the Club in an illegal dismissal complaint docketed as NLRC-NCR Case No. 30-01-00130-02 filed with the NLRC, National Capital Region Arbitration Branch. In his January 27, 2003 Decision,[10] the Labor Arbiter ruled in favor of the Club, and found that there was justifiable cause in terminating said respondents. He dismissed the complaint for lack of merit.

On February 21, 2003, respondents Pizarro, Braza, and Castueras filed an Appeal docketed as NLRC NCR CA No. 034601-03 with the NLRC.

On February 26, 2004, the NLRC rendered a Decision[11] granting the appeal, the *fallo* of which reads:

> WHEREFORE, finding merit in the Appeal, judgment is hereby rendered declaring the dismissal of the complainants illegal. x x x Alabang Country Club, Inc. and Alabang Country Club Independent Union are hereby ordered to reinstate complainants Christopher Pizarro, Nolasco Castueras and Michael Braza to their former positions without loss of seniority rights and other privileges with full backwages from the time they were dismissed up to their actual reinstatement.
>
> SO ORDERED.

The NLRC ruled that there was no justifiable cause for the termination of respondents Pizarro, Braza, and Castueras. The

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[9] *Id.* at 95-100.

[10] *Id.* at 157-173.

[11] *Id.* at 212-219.

commissioners relied heavily on Section 2, Rule XVIII of the Rules Implementing Book V of the Labor Code. Sec. 2 provides:

> SEC. 2. Actions arising from Article 241 of the Code. — Any action arising from the administration or accounting of union funds shall be filed and disposed of as an intra-union dispute in accordance with Rule XIV of this Book.
>
> In case of violation, the Regional or Bureau Director shall order the responsible officer to render an accounting of funds before the general membership and may, where circumstances warrant, mete the appropriate penalty to the erring officer/s, including suspension or expulsion from the union.[12]

According to the NLRC, said respondents' expulsion from the Union was illegal since the DOLE had not yet made any definitive ruling on their liability regarding the administration of the Union's funds.

The Club then filed a motion for reconsideration which the NLRC denied in its June 20, 2004 Resolution.[13]

Aggrieved by the Decision and Resolution of the NLRC, the Club filed a Petition for *Certiorari* which was docketed as CA-G.R. SP No. 86171 with the Court of Appeals (CA).

The CA Upheld the NLRC Ruling that the Three Respondents were Deprived Due Process

On July 5, 2005, the appellate court rendered a Decision,[14] denying the petition and upholding the Decision of the NLRC.

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[12] Amended by Department Order No. 40-03, Series of 2003. The quoted provision is now in Sec. 4, Rule XIII of the Implementing Rules of Book V, which reads:

> Sec. 4. **Actions arising from Article 241**.— Any complaint or petition with allegations of mishandling, misappropriation or non-accounting of funds in violation of Article 241 shall be treated as an intra-union dispute. It shall be heard and resolved by the Med-Arbiter pursuant to the provisions of Rule XI.

[13] *Rollo*, pp. 220-222.

[14] *Id*. at 50-56. Penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Cecilia C. Librea-Leagogo.

The CA's Decision focused mainly on the Club's perceived failure to afford due process to the three respondents. It found that said respondents were not given the opportunity to be heard in a separate hearing as required by Sec. 2(b), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as follows:

> SEC. 2. **Standards of due process; requirements of notice.**—In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Code:
>
> x x x x x x x x x
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.

The CA also said the dismissal of the three respondents was contrary to the doctrine laid down in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos* (*Malayang Samahan*), where this Court ruled that even on the assumption that the union had valid grounds to expel the local union officers, due process requires that the union officers be accorded a separate hearing by the employer company.[15]

In a Resolution[16] dated October 20, 2005, the CA denied the Club's motion for reconsideration.

The Club now comes before this Court with these issues for our resolution, summarized as follows:

1. Whether there was just cause to dismiss private respondents, and whether they were afforded due process in accordance with the standards provided for by the Labor Code and its Implementing Rules.

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[15] G.R. No. 113907, February 28, 2000, 326 SCRA 428, 463.

[16] *Rollo*, p. 58.

2. Whether or not the CA erred in not finding that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that respondents Pizarro, Braza, and Castueras were illegally expelled from the Union.

3. Whether the case of *Agabon vs. NLRC*[17] should be applied to this case.

4. Whether that in the absence of bad faith and malice on the part of the Club, the Union is solely liable for the termination from employment of said respondents.

The main issue is whether the three respondents were illegally dismissed and whether they were afforded due process.

The Club avers that the dismissal of the three respondents was in accordance with the Union security provisions in their CBA. The Club also claims that the three respondents were afforded due process, since the Club conducted an investigation separate and independent from that conducted by the Union.

Respondents Pizarro, Braza, and Castueras, on the other hand, contend that the Club failed to conduct a separate hearing as prescribed by Sec. 2(b), Rule XXIII, Book V of the implementing rules of the Code.

First, we resolve the legality of the three respondents' dismissal from the Club.

Valid Grounds for Termination

Under the Labor Code, an employee may be validly terminated on the following grounds: (1) just causes under Art. 282; (2) authorized causes under Art. 283; (3) termination due to disease under Art. 284; and (4) termination by the employee or resignation under Art. 285.

Another cause for termination is dismissal from employment due to the enforcement of the union security clause in the CBA. Here, Art. II of the CBA on Union security contains the provisions on the Union shop and maintenance of membership shop. There

[17] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated.[18] Termination of employment by virtue of a union security clause embodied in a CBA is recognized and accepted in our jurisdiction.[19] This practice strengthens the union and prevents disunity in the bargaining unit within the duration of the CBA. By preventing member disaffiliation with the threat of expulsion from the union and the consequent termination of employment, the authorized bargaining representative gains more numbers and strengthens its position as against other unions which may want to claim majority representation.

In terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the union's decision to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the CBA's union security provision.

The language of Art. II of the CBA that the Union members must maintain their membership in good standing as a condition *sine qua non* for their continued employment with the Club is unequivocal. It is also clear that upon demand by the Union and after due process, the Club shall terminate the employment of a regular rank-and-file employee who may be found liable for a number of offenses, one of which is malversation of Union funds.[20]

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[18] 48 Am Jur 2d, § 797, p. 509.

[19] *Del Monte Philippines v. Saldivar*, G.R. No. 158620, October 11, 2006, 504 SCRA 192, 203-204.

[20] *Supra* note 1, at 63.

Below is the letter sent to respondents Pizarro, Braza, and Castueras, informing them of their termination:

On October 18, 2001, the Club received a letter from the Board of Directors of the Alabang Country Club Independent Employees' Union ("Union") demanding your dismissal from service by reason of your alleged commission of act of dishonesty, specifically malversation of union funds. In support thereof, the Club was furnished copies of the following documents:

1. A letter under the subject "Result of Audit" dated September 14, 2001 (receipt of which was duly acknowledged from your end), which required you to explain in writing the charges against you (copy attached);

2. The Union's Board of Directors' Resolution dated October 2, 2001, which explained that the Union afforded you an opportunity to explain your side to the charges;

3. Minutes of the meeting of the Union's Board of Directors wherein an administrative investigation of the case was conducted last October 6, 2001; and

4. The Union's Board of Directors' Resolution dated October 15, 2001 which resolved your expulsion from the Union for acts of dishonesty and malversation of union funds, which was duly approved by the general membership.

After a careful evaluation of the evidence on hand *vis-à-vis* a thorough assessment of your defenses presented in your letter-explanation dated October 6, 2001 of which you also expressed that you waived your right to be present during the administrative investigation conducted by the Union's Board of Directors on October 6, 2001, Management has reached the conclusion that there are overwhelming reasons to consider that you have violated ***Section 4(f) of the CBA***, particularly on the grounds of malversation of union funds. The Club has determined that you were sufficiently afforded due process under the circumstances.

Inasmuch as the Club is duty-bound to comply with its obligation under ***Section 4(f) of the CBA***, it is unfortunate that Management is left with no other recourse but to consider your termination from service effective upon your receipt thereof. We wish to thank you for your services during your employment with the Company. It would

be more prudent that we just move on independently if only to maintain industrial peace in the workplace.

Be guided accordingly.[21]

Gleaned from the above, the three respondents were expelled from and by the Union after due investigation for acts of dishonesty and malversation of Union funds. In accordance with the CBA, the Union properly requested the Club, through the October 18, 2001 letter[22] signed by Mario Orense, the Union President, and addressed to Cynthia Figueroa, the Club's HRD Manager, to enforce the Union security provision in their CBA and terminate said respondents. Then, in compliance with the Union's request, the Club reviewed the documents submitted by the Union, requested said respondents to submit written explanations, and thereafter afforded them reasonable opportunity to present their side. After it had determined that there was sufficient evidence that said respondents malversed Union funds, the Club dismissed them from their employment conformably with Sec. 4(f) of the CBA.

Considering the foregoing circumstances, we are constrained to rule that there is sufficient cause for the three respondents' termination from employment.

Were respondents Pizarro, Braza, and Castueras accorded due process before their employments were terminated?

We rule that the Club substantially complied with the due process requirements before it dismissed the three respondents.

The three respondents aver that the Club violated their rights to due process as enunciated in *Malayang Samahan*,[23] when it failed to conduct an independent and separate hearing before they were dismissed from service.

The CA, in dismissing the Club's petition and affirming the Decision of the NLRC, also relied on the same case. We explained in *Malayang Samahan*:

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[21] *Rollo*, pp. 95-100.

[22] *Id*. at 73.

[23] *Supra* note 15.

x x x Although this Court has ruled that union security clauses embodied in the collective bargaining agreement may be validly enforced and that dismissals pursuant thereto may likewise be valid, this does not erode the fundamental requirements of due process. The reason behind the enforcement of union security clauses which is the sanctity and inviolability of contracts cannot override one's right to due process.[24]

In the above case, we pronounced that while the company, under a maintenance of membership provision of the CBA, is bound to dismiss any employee expelled by the union for disloyalty upon its written request, this undertaking should not be done hastily and summarily. The company acts in bad faith in dismissing a worker without giving him the benefit of a hearing.[25] We cautioned in the same case that the power to dismiss is a normal prerogative of the employer; however, this power has a limitation. The employer is bound to exercise caution in terminating the services of the employees especially so when it is made upon the request of a labor union pursuant to the CBA. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing employees because the dismissal affects not only their positions but also their means of livelihood. Employers should respect and protect the rights of their employees, which include the right to labor.[26]

The CA and the three respondents err in relying on *Malayang Samahan,* as its ruling has no application to this case. In *Malayang Samahan*, the union members were expelled from the union and were immediately dismissed from the company without any semblance of due process. Both the union and the company did not conduct administrative hearings to give the employees a chance to explain themselves. In the present case, the Club has substantially complied with due process. The three respondents were notified that their dismissal was being requested by the

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[24] *Supra* at 461-462.

[25] *Supra* at 462; citing *Cariño v. National Labor Relations Commission*, G.R. No. 91086, May 8, 1990, 185 SCRA 177, 187.

[26] *Supra* at 462.

Union, and their explanations were heard. Then, the Club, through its President, conferred with said respondents during the last week of October 2001. The three respondents were dismissed only after the Club reviewed and considered the documents submitted by the Union *vis-à-vis* the written explanations submitted by said respondents. Under these circumstances, we find that the Club had afforded the three respondents a reasonable opportunity to be heard and defend themselves.

On the applicability of *Agabon*, the Club points out that the CA ruled that the three respondents were illegally dismissed primarily because they were not afforded due process. We are not unaware of the doctrine enunciated in *Agabon* that when there is just cause for the dismissal of an employee, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual, and the employer should indemnify the employee for the violation of his statutory rights.[27] However, we find that we could not apply *Agabon* to this case as we have found that the three respondents were validly dismissed and were actually afforded due process.

Finally, the issue that since there was no bad faith on the part of the Club, the Union is solely liable for the termination from employment of the three respondents, has been mooted by our finding that their dismissal is valid.

WHEREFORE, premises considered, the Decision dated July 5, 2005 of the CA and the Decision dated February 26, 2004 of the NLRC are hereby *REVERSED* and *SET ASIDE*. The Decision dated January 27, 2003 of the Labor Arbiter in NLRC-NCR Case No. 30-01-00130-02 is hereby *REINSTATED*.

No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Azcuna,[*] and *Tinga, JJ.,* concur.

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[27] *Supra* note 17, at 616.

[*] Per September 3, 2007 raffle.

SECOND DIVISION

[G.R. No. 173207. February 14, 2008]

PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK (now BANCO DE ORO-EPCI, INC.), *petitioner, vs.* **DENNIS CUSTODIO, WILFREDO D. GLIANE, and ROLANDO FRANCISCO,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE. — While a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision, an appellee x x x can advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed.

2. ID.; ID.; ID.; POINTS OF LAW, THEORIES AND ISSUES NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; RATIONALE. — Points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice, and due process. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory which it could have done had it been aware of it at the time of the hearing before the trial court.

3. ID.; EVIDENCE; ADMISSIONS; JUDICIAL ADMISSION CANNOT BE CONTROVERTED UNLESS A PARTY ALLEGES PALPABLE MISTAKE OR DENIES SUCH ADMISSION. — As the object of pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings. Unless a party alleges palpable mistake or denies such admission, judicial admissions cannot be controverted.

4. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; VEIL OF SEPARATE CORPORATE PERSONALITY, WHEN LIFTED. — [W]hile a corporation is clothed with a personality separate and distinct from the persons composing it, the veil of separate corporate personality may be lifted when it is used as a shield to confuse legitimate issues, or where lifting the veil is necessary to achieve equity or for the protection of the creditors.

APPEARANCES OF COUNSEL

Balane Tamase Alampay Law Office for petitioner.
Robert T. Neri for R. Francisco.
Nemenzo YLosorio Galunan Law Office for D. Custodio and W.D. Gliane.

D E C I S I O N

CARPIO MORALES, *J.*:

At the time material to the present case, respondent Dennis Custodio (Custodio) had a door-to-door dollar remittance business. Respondent Wilfredo D. Gliane (Gliane) was one of his agents in Saudi Arabia.

As agent of Custodio, Gliane collected dollars from overseas workers in Saudi Arabia to be remitted to their beneficiaries in the Philippines.

In their transactions, Custodio and Gliane availed of the services of the *Express Padala* desk of petitioner Philippine Commercial and International Bank (PCIB), now Banco de Oro-EPCI, Inc.,[1] at its affiliate bank, the Al Rahji Bank in Saudi Arabia. The procedure they adopted in remitting dollars was to course them through regular clients of PCIB who, having established a good relationship with the bank, enjoyed special foreign exchange rates with it. One of those clients was respondent Rolando Francisco (Francisco) who maintained joint accounts, including those with his wife and Erlinda Chua (Erlinda).

[1] CA *rollo*, pp. 491-493.

On March 12, 1997, Francisco and his wife,[2] purportedly on behalf of ROL-ED Traders Group Corporation (ROL-ED), a company said to be owned and controlled by Francisco, entered into a Foreign Bills Purchase Line Agreement (FBPLA)[3] in the amount of ₱70 Million Pesos with the PCIB-Greenhills bank which would purchase checks and demand drafts, among other things, drawn on "U.S. Bank," the proceeds of which would be advanced to Francisco by the bank without going through the regular 23-day clearing period. Under the FBPLA, the spouses made the following undertaking:

> If a check is returned/dishonored for any reason whatsoever, we shall immediately, without need of demand, pay [the bank] the amount of the check, together with the interest at the rate of ** percent (%) per annum x x x and penalty at the rate of twelve percent (12%) per annum, computed from the date of purchase of the check to the date of full payment.
>
> ** – prevailing market rate
>
> The amount of returned and dishonored checks, together with interest, penalty and other charges, shall be debited from any of our accounts with any of [the bank's] branches, and if the credit balance thereof is insufficient, we undertake to pay [the bank] the deficiency immediately.[4] (Underscoring supplied)

And they authorized the PCIB-Greenhills

> x x x at [its] option and without notice, to set-off or apply to the payment of any dishonored/returned check, interest, penalty and other charges, any and all monies which may be in [its] hands on deposit or otherwise belonging to us.[5] (Underscoring supplied)

Francisco deposited four dollar checks totaling US$651,000 in his joint account with Erlinda at the PCIB-Greenhills. The checks were cleared and paid by Chase Manhattan Bank, but

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[2] TSN, October 12, 2000, pp. 14-20.

[3] Records, pp. 277-280.

[4] *Id.* at 277.

[5] *Ibid*.

they were subsequently dishonored for insufficient funds.[6] Chase Manhattan Bank thus debited the amount of the dishonored checks from the account of PCIB-Greenhills which it maintained with it.[7]

Having received notice of the debiting by Chase Manhattan Bank of US$651,000 from its account, PCIB-Greenhills debited US$85,000 from Francisco and Erlinda's joint account as partial payment of the US$651,000 dishonored checks.[8]

In the meantime or on May 17, 1998, Gliane remitted US$42,300 to the above-said joint account of Francisco at the PCIB-Greenhills. Before that, however, Francisco himself had asked Custodio to desist from remitting dollars to him from Saudi Arabia because PCIB-Greenhills had imposed a higher exchange rate on him (Francisco).

Having gotten wind of Gliane's remittance of dollars to the joint account of Francisco, Custodio instructed Gliane to request, as the latter did, for the amendment of the designated beneficiary from Francisco to Belarmino Cortez and/or Rhodora Cruz who maintained a joint account in PCIB-Greenhills. PCIB's affiliate bank in Saudi Arabia transmitted the request to PCIB-Ermita, Manila which in turn transmitted it to PCIB-Greenhills.

At the time the request for change of beneficiary was received, however, PCIB-Greenhills had set off the US$42,300 remitted by Gliane against Francisco's remaining balance of his obligation under the FBPLA (US$651,000 minus the US$85,000 earlier debited or US$566,000).

The Area Manager for PCIB-Chinese Banking Group, Marilyn Tan (Marilyn), to whom Custodio attributed the instruction to set-off the US$42,300 remittance against Francisco's obligation to PCIB-Greenhills, explained to Custodio that the amendment was no longer feasible as the US$42,300 remitted by Gliane had already been applied as partial payment of his (Francisco's)

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[6] *Id*. at 283-290.

[7] *Id*. at 284, 286, 288, 290.

[8] *Id*. at 291. *Vide* TSN, October 12, 2000, pp. 4-20.

outstanding obligation with PCIB-Greenhills. She thus advised Custodio to take the matter up with Francisco as she did not know of any arrangement between him and Francisco.

Custodio and Gliane thereafter filed on July 1, 1998 a complaint against PCIB, Marilyn and Francisco, for specific performance and damages before the Regional Trial Court (RTC) of Makati, to recover the US$42,300, damages and attorney's fees.[9] They alleged that PCIB failed to perform its obligation to deliver the sum of money they remitted through it to their beneficiaries,[10] and that Francisco wrongfully appropriated or consented to the appropriation of the aforesaid remittance as payment of his loan account with the bank.[11]

PCIB and Marilyn filed their Answer[12] with Cross-claim against Francisco. Francisco did file his Answer with Compulsory Counterclaim[13] beyond the reglementary period but the trial court admitted it in the interest of substantial justice.[14]

Francisco and his counsel did not participate in the pre-trial[15] and in the trial on the merits. He was thereupon deemed to have waived his right to present evidence.[16]

By Decision of January 30, 2002, Branch 134 of the Makati RTC, finding that PCIB was negligent and that Francisco, albeit not negligent, may not be unjustly enriched, found them jointly and severally liable to pay Custodio and Gliane damages, attorney's fees and costs. Thus the decision disposed:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco.

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

[10] *Vide* records, pp. 5-6.

[11] *Vide id*., p. 6.

[12] Records, pp. 83-90.

[13] *Id*. at 32-34.

[14] *Id*. at 46.

[15] There is no showing if he was declared as in default.

[16] Records, pp. 154, 370.

Defendants PCIB and Francisco are hereby directed to pay the plaintiffs, **jointly and severally**, as follows:

1. US$42,300.00 as actual damages;
2. ₱50,000.00 as exemplary damages;
3. ₱30,000.00 as attorney's fees;
4. cost of suit.

Defendants' counterclaim is dismissed.

SO ORDERED.[17] (Emphasis and underscoring supplied)

PCIB at once filed a Notice of Appeal.[18]

Francisco surfaced and filed a Motion for Reconsideration,[19] raising the following arguments why he could not be held solidarily liable with PCIB:

> Defendant FRANCISCO cannot be held liable under the transaction in question considering that it was found out in the decision itself that there was no finding of fault or negligence on the part of FRANCISCO. (see decision p. 8.)[20]
>
> It cannot also be said that FRANCISCO benefited from the said act of PCIBank because, according to the findings of this Honorable Court, the **payment of the obligation of the defendant FRANCISCO out of US $4[2],300.00 is void. And if such application of payment by PCIBank is void,** no valid payment was made. Therefore, FRANCISCO was never benefited from the invalid and void payment. The decision further state[s]: "There being no objection as to the beneficiary of the US $42,300.00 which was erroneously credited to the account of defendant FRANCISCO who was unauthorized to receive the same, no valid payment was made and the defendant PCIB as debtor was not released from its obligation to return the equivalent amount. (see decision p. 7.)[21] (Emphasis in the original; underscoring supplied)

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[17] *Id*. at 376.

[18] *Id*. at 377-378.

[19] *Id*. at 380-383.

[20] *Id*. at 376.

[21] *Id*. at 375. Block quote from RTC records, pp. 381-382.

Custodio and Gliane filed a Motion for Partial Reconsideration[22] of the trial court's decision, praying for an additional monetary award of legal interest "on the amount of US$42,3000 from May 17, 1998 up to the date PCIB, Inc. actually settles the same, and reasonable amount in the award of damages and attorney's fees."[23]

By Order of April 26, 2002, the trial court granted the respective motions for reconsideration of Francisco and of Custodio and Gliane, disposing as follows:

WHEREFORE, modified as indicated above, the dispositive portion of this Court's Decision dated January 30, 2002 should be read as follows:

> **"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco, as follows:**
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> **1) Defendant PCIB is hereby directed to pay the plaintiffs the amount of US$ 42,300.00 plus 12% interest per annum from May 29, 1988 as actual damages *with the right of reimbursement of the amount of US$42,300.00 against defendant Francisco; and***
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> **2) Defendant PCIB is likewise adjudged to pay plaintiffs further sums of:**
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> **a) Php 50,000.00 as exemplary damages;**
>
> **b) Php 30,000.00 as attorney's fees;**
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> **c) Cost of suit.**
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> **Defendants' counterclaim is dismissed.**
>
> **SO ORDERED."**

SO ORDERED.[24] (Emphasis in the original; italics and underscoring supplied)

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[22] *Id.* at 385-388.

[23] *Id.* at 387.

[24] *Id.* at 405.

It bears noting that while the trial court, in the above-quoted dispositive portion of the order modifying its original decision, held PCIB solely liable to pay US$42,300 to Custodio and Gliane, it decreed that PCIB had the right of reimbursement of the amount from Francisco.

PCIB filed a Notice of Appeal *Ad Cautelam*,[25] indicating therein that it was likewise appealing the trial court's April 26, 2002 Order modifying its original decision.

The Court of Appeals, by Decision[26] of August 11, 2004, granted the appeal of PCIB and accordingly reversed the trial court's April 26, 2002 Order-modified decision. It freed PCIB of any liability and held Francisco solely liable to Custodio and Gliane. And it deleted the award of exemplary damages, attorney's fees and costs. In so deciding, the trial court ruled:

> The record belies [the] finding of negligence on the part of appellant bank. Defendant Francisco and appellees are privy to an agreement whereby appellee's dollar remittance shall be coursed through Francisco's account to obtain higher exchange rates. In his testimony before the trial Court, appellee Custodio admitted using defendant Francisco as a pretend-beneficiary to enjoy higher exchange rates on his remittances.[27]
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> x x x x x x x x x
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> x x x Defendant **Francisco** was unjustly enriched when the US$42,300.00 remittance was credited in his favor by appellant bank. **The obligation to restitute the said amount clearly falls on him**.[28]
> x x x
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> x x x x x x x x x
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> Anent the imposition of exemplary damages, We find the award to be sorely lacking in basis. There is no showing that appellant

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[25] *Id.* at 406-407.

[26] Penned by then-Court of Appeals Associate Justice Ruben T. Reyes, with the concurrences of Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr. CA *rollo*, pp. 131-145.

[27] *Id.* at 141.

[28] *Id.* at 143.

PCIB or defendant Francisco acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Neither is there any showing of bad faith. x x x[29]

x x x x x x x x x

The award of attorney's fees and costs of suit likewise finds no factual and legal support. x x x[30] (Emphasis and underscoring supplied)

Thus the appellate court disposed in its August 11, 2004 Decision:

WHEREFORE, the appealed judgment is hereby **REVERSED** and **SET ASIDE.** A new one is entered ordering defendant Rolando Francisco to pay the plaintiffs-appellees Dennis Custodio and Alfredo Gliane the sum of US$42,300.00 or its peso equivalent at the time of payment with legal interest at 6% per annum from finality of this Decision until its satisfaction.[31] (Underscoring supplied)

Francisco filed a Motion for Reconsideration[32] of the appellate court's decision in which he, for the first time on appeal, claimed that it was ROL-ED which entered into the FBPLA with PCIB-Greenhills:

A close examination of the FBLA x x x shows that the said agreement is one between ROL-ED Traders Group Corporation (ROL-ED) and the bank and **not with Francisco**. This is also true in the other agreements presented by the bank as its evidence. As such, defendant **Francisco is not a party to these agreements**. They cannot be used against him. He has a separate and distinct personality from that of ROL-ED. Consequently, the funds of the appellees could not be applied to Francisco['s] debt on the basis of the Foreign Bills Purchase Line Agreement because the latter is not a party thereto.

True, it was defendant Francisco who signed for the corporation as its signatory but his participation therein is only in a representative capacity and binds only the corporation and not his own private affairs

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[29] *Id.* at 143.

[30] *Id.* at 144.

[31] *Ibid.*

[32] *Id.* at 146-155.

such as a conduit of appellees' funds. The funds were originally directed to "Rolando Francisco" not to "ROL-ED TRADERS GROUP CORPORATION."[33] (Emphasis and underscoring supplied);

In the same motion, Francisco argued that no evidence was presented to prove that the bank indeed credited the amount of US$42,300 to his bank account and applied it against his obligation.[34]

Custodio and Gliane filed too a Motion for Reconsideration,[35] arguing that

I. THE DEBTOR-CREDITOR RELATIONSHIP BETWEEN THE BANK AND HEREIN PLAINTIFFS-APPELLEES EMANATE[S] NOT ONLY FROM THE AMENDMENT REQUEST BUT ALSO FROM THE BANK'S UNDERTAKING UNDER THE "*EXPRESS PADALA*" SCHEME.

II. PLAINTIFF-APPELLEES SHOULD STILL BE CONSIDERED THE OWNER OF THE FUNDS IN THE LIGHT OF THE AMENDMENT REQUEST.[36]

Custodio and Gliane later filed a Supplemental Motion for Reconsideration[37] questioning the appellate court's reduction of the interest and deletion of the award of exemplary damages, attorney's fees, and costs.

Crediting Francisco's argument that it was ROL-ED, which he merely represented, that entered into the FBPLA with PCIB, the appellate court, by AMENDED DECISION[38] of October 25, 2005, set aside its earlier decision and **reinstated** the trial

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[33] *Id*. at 150-151.

[34] *Id*. at 151-153.

[35] *Id*. at 159-164.

[36] *Id*. at 160.

[37] *Id*. at 191-195.

[38] Penned also by the *ponente* of the original decision, then Court of Appeals Associate Justice Ruben T. Reyes, with the concurrence of Associate Justices Elvi John S. Asuncion and Jose C. Reyes, Jr. *Id*. at 227-247.

court's January 30, 2002 decision, as amended by its Order dated April 26, 2002.

PCIB filed a Motion for Reconsideration[39] which the Court of Appeals denied.[40] Hence, its present Petition for Review[41] on *Certiorari*, contending that the Court of Appeals erred

A. x x x in issuing an *Amended Decision* without any Motion for Reconsideration to prompt it;

B. x x x in taking into consideration new matters which were not put to fore before the lower court and in lending credence to **Francisco's** bare assertions that he and ROL-ED are not one and the same[;]

C. x x x in ruling that [E]PCIB was negligent in carrying out its obligations under the *Express Padala* facility;

D. x x x in not ruling that PCIB compensation took place between [E]PCIB and Francisco;

E. x x x in disregarding that the root cause of this case was the deceitful scheme hatched by **Gliane, Custodio,** and **Francisco** against [E]PCIB.[42] (Emphasis and underscoring supplied)

To PCIB, it was error for the appellate court to entertain Francisco's motion for reconsideration of its original decision, he not having appealed the modified decision of the trial court, hence, the same had, to him, become final.

While a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision,[43] an appellee, like Francisco in the appellate court level, can advance any argument that he may

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[39] *Id.* at 261-273.

[40] *Id.* at 294-295.

[41] *Rollo,* pp. 52-78.

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

[43] *Filflex Industrial & Manufacturing Corp. v. National Labor Relations Commission,* 349 Phil. 913, 925 (1998).

deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed.[44] It bears recalling at this juncture that while the modified decision of the trial court held PCIB solely liable to Custodio and Gliane, it went on to hold that PCIB had the "**right of reimbursement of the amount of US$42,300.00 against defendant Francisco.**"[45]

No doubt, PCIB prayed in its Cross-Claim[46] against Francisco that, among other things, "[i]n the unlikely event that PCIB and [Marilyn] are adjudged liable for the claims of the plaintiff[s], the other defendant herein, Rolando Francisco, should be held liable to reimburse PCIBank and [Marilyn] for whatever amounts they may be required to pay the plaintiffs." The trial court did not, however, order Francisco to reimburse PCIB. It merely stated that PCIB had the right of reimbursement from Francisco.

Parenthetically, the Court of Appeals erred in considering Francisco's belated invocation of his separate personality from ROL-ED to justify his freedom from liability.

As earlier noted, Francisco raised this argument **for the first time in his motion for reconsideration of the appellate court's original Decision**. Points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice, and due process.[47] It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory which it could have done had it been aware of it at the time of the hearing before the trial court.[48]

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[44] *Vide SMI Fish Industries, Inc. v. NLRC*, G.R. Nos. 96952-56, September 2, 1992, 213 SCRA 444, 449.

[45] Records, p. 405 (emphasis and underscoring supplied).

[46] *Id*. at 87.

[47] *Vide Philippine Airlines, Inc. v. National Labor Relations Commission*, 328 Phil. 814, 823 (1996).

[48] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 936 (2003).

Furthermore, in his Answer with Compulsory Counterclaim, Francisco claimed that "[h]e never instructed nor authorized the defendant bank to apply the U.S. dollar remittances to pay **his loan obligation** with the said bank"[49] (emphasis and underscoring supplied). He echoed this claim in his Motion for Reconsideration that he filed also before the trial court, *viz*:

> A close and serious reading of the aforesaid decision will clearly show that there is absolutely no evidence that FRANCISCO directed nor authorized PCIBank to apply the US $42,300.00 remitted by the plaintiffs through PCIBank to his own loan account with PCIBank.
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> x x x x x x x x x
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> It cannot also be said that FRANCISCO benefited from the said act of PCIBank because, according to the findings of this Honorable Court, the **payment of the obligation of the defendant FRANCISCO out of US $ 4[2],300.00 is void**. x x x[50] (Emphasis in the original; underscoring supplied)

Francisco thus virtually admitted in these two cited pleadings that the loan to which the US$42,300 remittance was applied was his. As the object of pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.[51] Unless a party alleges palpable mistake or denies such admission, judicial admissions cannot be controverted.[52]

Therefore, as the US$42,300 remittance was applied to, by his own admission, Francisco's loan, the set-off was valid.

Parenthetically too, while Francisco claims that the loan in question was that of ROL-ED and not his, he, as earlier stated,

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[49] Records, pp. 32-33.

[50] *Id*. at 381.

[51] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 937 (2003) (citation omitted).

[52] *Ibid.*; *vide* RULES OF COURT, Rule 129, Section 4.

deposited the US$651,000 checks in his joint account with Erlinda and not in the account of ROL-ED.[53]

At all events, while a corporation is clothed with a personality separate and distinct from the persons composing it, the veil of separate corporate personality may be lifted when it is used as a shield to confuse legitimate issues, or where lifting the veil is necessary to achieve equity or for the protection of the creditors.[54] In the case at bar, there can be no mistake that Francisco belatedly invoked the separate identity of ROL-ED to evade his liability to PCIB.

On the failure of PCIB to comply with Gliane's request for amendment of beneficiary, Gliane and Custodio failed to prove that the request for amendment was communicated to PCIB within reasonable time. The testimonies[55] of Marilyn and Allen Alcantara (Alcantara), the PCIB Remittance Officer for the Middle East, that PCIB received the amendatory request after the set-off was not refuted. Thus, Alcantara explained that PCIB-Greenhills received the amendatory request on May 19, 1998, local time, after the said request underwent authentication procedures.

The entry reflecting the debiting of the US$85,000 against Francisco's account with PCIB-Greenhills is dated May 19, 1998, 4:45 P.M. local time.[56] Gliane and Custodio argue that "it is of standard operating policy of any banking institutions that the regular "holding period" of money transfers is more or less three (3) days."[57] They failed to prove, however, that PCIB had that policy, or that the contract under the *Express Padala* service of PCIB provided for a three-day holding period. Furthermore, PCIB could not be faulted for the dispatch with

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[53] Records, pp. 294-296, 298-299.

[54] *Vide Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 150 (citations omitted).

[55] TSN, October 12, 2000, pp. 20-22; TSN, April 3, 2001, pp. 6-13.

[56] Records, p. 291.

[57] *Rollo*, p. 189.

which it credited the US$42,300 to Francisco's account. As it argued:

> Equitable agrees with [the Court of Appeals] that the services offered by a banking institution are imbued with public interest. It is precisely with this principle in mind that Equitable effected the transfer of funds **the quickest time practicable.** Equitable is mindful of the fact that any delay in the remittance of money could be disastrous for the beneficiaries interest.
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> It is unfortunate for the plaintiffs-appellees, however, that their beneficiary — and by May 19, 1998, after the transfer had been effected, the **rightful owner** of the amounts remitted — had several outstanding obligations with Equitable. Obligations which Equitable, as Francisco's creditor, had the right to seek payment for.[58] (Emphasis and underscoring supplied)

Gliane and Custodio themselves admit that time was of the essence in PCIB's discharge of its obligation under its *Express Padala* service:

> x x x [W]hen petitioner's personnel in Saudi Arabia [marketed] and [e]nticed respondents Custodio and Gliane to course their money remittances through petitioner bank, they fully assured respondents of a special privilege, one of which is the speed of transfer and as a matter of fact respondents' money transfers are always noted with the word **"PRIORITY."**[59] (Capitalization and emphasis in the original; underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Amended Decision of the Court of Appeals dated October 25, 2005 is *REVERSED* and *SET ASIDE*, and its August 11, 2004 Decision *REINSTATED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

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[58] CA *rollo*, p. 268.

[59] *Rollo*, p. 195.

SECOND DIVISION

[G.R. No. 174629. February 14, 2008]

REPUBLIC OF THE PHILIPPINES, Represented by THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), *petitioner, vs.* **HON. ANTONIO M. EUGENIO, JR., AS PRESIDING JUDGE OF RTC, MANILA, BRANCH 24, PANTALEON ALVAREZ and LILIA CHENG,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9160, AS AMENDED BY REPUBLIC ACT NO. 9194 (THE ANTI-MONEY LAUNDERING ACT); OVERVIEW. — Money laundering has been generally defined by the International Criminal Police Organization (Interpol) 'as "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources." x x x. The original AMLA, Republic Act (R.A.) No. 9160, was passed in 2001. It was amended by R.A. No. 9194 in 2003. Section 4 of the AMLA states that "[m]oney laundering is a crime whereby the proceeds of an unlawful activity as [defined in the law] are transacted, thereby making them appear to have originated from legitimate sources." The section further provides the three modes through which the crime of money laundering is committed. Section 7 creates the AMLC and defines its powers, which generally relate to the enforcement of the AMLA provisions and the initiation of legal actions authorized in the AMLA such as civil forefeiture proceedings and complaints for the prosecution of money laundering offenses. In addition to providing for the definition and penalties for the crime of money laundering, the AMLA also authorizes certain provisional remedies that would aid the AMLC in the enforcement of the AMLA. These are the "freeze order" authorized under Section 10, and the "bank inquiry order" authorized under Section 11.

2. ID.; ID.; ID.; BANK INQUIRY ORDER; MAY BE AVAILED OF WITHOUT NEED OF A PRE-EXISTING CASE UNDER THE ANTI-MONEY LAUNDERING ACT. — Respondents

posit that a bank inquiry order under Section 11 may be obtained only upon the pre-existence of a money laundering offense case already filed before the courts. The conclusion is based on the phrase "upon order of any competent court in cases of violation of this Act," the word "cases" generally understood as referring to actual cases pending with the courts. We are unconvinced by this proposition, and agree instead with the then Solicitor General who conceded that the use of the phrase "in cases of" was unfortunate, yet submitted that it should be interpreted to mean "in the event there are violations" of the AMLA, and not that there are already cases pending in court concerning such violations. If the contrary position is adopted, then the bank inquiry order would be limited in purpose as a tool in aid of litigation of live cases, and wholly inutile as a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the AMLA. Should that be the situation, in all likelihood the AMLC would be virtually deprived of its character as a discovery tool, and thus would become less circumspect in filing complaints against suspect account holders. After all, under such set-up the preferred strategy would be to allow or even encourage the indiscriminate filing of complaints under the AMLA with the hope or expectation that the evidence of money laundering would somehow surface during the trial. Since the AMLC could not make use of the bank inquiry order to determine whether there is evidentiary basis to prosecute the suspected malefactors, not filing any case at all would not be an alternative. Such unwholesome set-up should not come to pass. Thus Section 11 cannot be interpreted in a way that would emasculate the remedy it has established and encourage the unfounded initiation of complaints for money laundering.

3. ID.; ID.; ID.; ID.; ISSUANCE *EX PARTE* OF BANK INQUIRY ORDER, NOT GENERALLY AUTHORIZED. — It is evident that Section 11 does not specifically authorize, as a general rule, the issuance *ex parte* of the bank inquiry order. We quote the provision in full: *"**SEC. 11. Authority to Inquire into Bank Deposits.*** — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non bank financial institution upon order

of any competent court in cases of violation of this Act, **when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)1, (2) and (12).** To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit of investment with any banking institution or non bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP."

4. ID.; ID.; ID.; ID.; INQUIRY INTO BANK ACCOUNTS WITHOUT OBTAINING JUDICIAL ORDER, WHEN ALLOWED. — Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder.

5. ID.; ID.; ID.; FREEZE ORDER AND BANK INQUIRY ORDER, DISTINGUISHED. — Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to authorize an *ex parte* application for the provisional relief therein, a circumstance absent in Section 11. If indeed the legislature had intended to authorize *ex parte* proceedings for the issuance of the bank inquiry order, then it could have easily expressed such intent in the law, as it did with the freeze order under Section 10. Even more tellingly, the current language of Sections 10 and 11 of the AMLA was crafted at the same time, through the passage of R.A. No. 9194. Prior to the amendatory law, it was the AMLC, not the Court of Appeals, which had authority to issue a freeze order, whereas a bank inquiry order always then required, without exception, an order from a competent court. It was through the same enactment that *ex parte* proceedings

were introduced for the first time into the AMLA, in the case of the freeze order which now can only be issued by the Court of Appeals. It certainly would have been convenient, through the same amendatory law, to allow a similar *ex parte* procedure in the case of a bank inquiry order had Congress been so minded. Yet nothing in the provision itself, or even the available legislative record, explicitly points to an *ex parte* judicial procedure in the application for a bank inquiry order, unlike in the case of the freeze order. That the AMLA does not contemplate *ex parte* proceedings in applications for bank inquiry orders is confirmed by the present implementing rules and regulations of the AMLA, promulgated upon the passage of R.A. No. 9194. With respect to freeze orders under Section 10, the implementing rules do expressly provide that the applications for freeze orders be filed *ex parte*, but no similar clearance is granted in the case of inquiry orders under Section 11. These implementing rules were promulgated by the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission, and if it was the true belief of these institutions that inquiry orders could be issued *ex parte* similar to freeze orders, language to that effect would have been incorporated in the said Rules. This is stressed not because the implementing rules could authorize *ex parte* applications for inquiry orders despite the absence of statutory basis, but rather because the framers of the law had no intention to allow such *ex parte* applications. Even the Rules of Procedure adopted by this Court in A.M. No. 05-11-04-SC to enforce the provisions of the AMLA specifically authorize *ex parte* applications with respect to freeze orders under Section 10 but make no similar authorization with respect to bank inquiry orders under Section 11.

6. ID.; ID.; ID.; *EX PARTE* JUDICIAL PROCEDURE, ALLOWED IN THE APPLICATION FOR A FREEZE ORDER, BUT NOT FOR A BANK INQUIRY ORDER; RATIONALE. — The Court could divine the sense in allowing *ex parte* proceedings under Section 10 and in proscribing the same under Section 11. A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3(i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order

anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued. On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank. x x x Without doubt, a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense. Still, the account holder so alerted will in fact be unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole-hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner.

7. ID.; ID.; ID.; BANK INQUIRY ORDER; DETERMINATION OF PROBABLE CAUSE THAT THE SUBJECT DEPOSITS OR INVESTMENTS ARE RELATED TO UNLAWFUL ACTIVITIES, EXPLAINED. — Section 11 itself requires that it be established that "there is probable cause that the deposits or investments are related to unlawful activities," and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word "determination" implies deliberation and is, in normal legal contemplation, equivalent to "the decision of a court of justice." The court receiving

the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact. The account holder would be certainly capable of contesting such probable cause if given the opportunity to be apprised of the pending application to inquire into his account; hence a notice requirement would not be an empty spectacle. It may be so that the process of obtaining the inquiry order may become more cumbersome or prolonged because of the notice requirement, yet we fail to see any unreasonable burden cast by such circumstance. After all, x x x requiring notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank.

8. ID.; ID.; ID.; ID.; DISTINGUISHED FROM A SEARCH WARRANT. — The Constitution and the Rules of Court prescribe particular requirements attaching to search warrants that are not imposed by the AMLA with respect to bank inquiry orders. A constitutional warrant requires that the judge personally examine under oath or affirmation the complainant and the witnesses he may produce, such examination being in the form of searching questions and answers. Those are impositions which the legislative did not specifically prescribe as to the bank inquiry order under the AMLA, and we cannot find sufficient legal basis to apply them to Section 11 of the AMLA. Simply put, a bank inquiry order is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property. Even as the Constitution and the Rules of Court impose a high procedural standard for the determination of probable cause for the issuance of search warrants which Congress chose not to prescribe for the bank inquiry order under the AMLA, Congress nonetheless disallowed *ex parte* applications for the inquiry order. We can discern that in exchange for these procedural standards normally applied to search warrants, Congress chose instead to legislate a right to notice and a right to be heard — characteristics of judicial proceedings which are not *ex parte*. Absent any demonstrable constitutional infirmity, there is no reason for us to dispute such legislative policy choices.

9. ID.; ID.; REPUBLIC ACT NO. 1405 (THE BANK SECRECY ACT OF 1955); PROVIDES THAT PHILIPPINE BANK DEPOSITS SHALL BE CONSIDERED AS OF AN ABSOLUTELY CONFIDENTIAL NATURE. — The Court's construction of Section 11 of the AMLA is undoubtedly influenced by right to privacy considerations. x x x [S]ufficient for our purposes, we can assert there is a right to privacy governing bank accounts in the Philippines, and that such right finds application to the case at bar. The source of such right is statutory, expressed as it is in R.A. No. 1405 otherwise known as the Bank Secrecy Act of 1955. The right to privacy is enshrined in Section 2 of that law, to wit: "SECTION 2. **All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature** and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation." Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines. Subsequent laws, including the AMLA, may have added exceptions to the Bank Secrecy Act, yet the secrecy of bank deposits still lies as the general rule. It falls within the zones of privacy recognized by our laws. The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information under Section 7, Article III or under the requirement of full public disclosure under Section 28, Article II. Unless the Bank Secrecy Act is repealed or amended, the legal order is obliged to conserve the absolutely confidential nature of Philippine bank deposits.

10. ID.; ID.; ID.; ID.; EXCEPTIONS. — Section 2 of the Bank Secrecy Act itself prescribes exceptions whereby these bank accounts may be examined by "any person, government official, bureau or office"; namely when: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) the examination of bank accounts is upon order of a competent

court in cases of bribery or dereliction of duty of public officials; and (4) the money deposited or invested is the subject matter of the litigation. Section 8 of R.A. Act No. 3019, the Anti-Graft and Corrupt Practices Act, has been recognized by this Court as constituting an additional exception to the rule of absolute confidentiality. Another exception may be found in Section 8 of R.A. Act No. 6770, or the Ombudsman Act of 1989, which empowers the Ombudsman to "[a]dminister oaths, issue subpoena and subpoena *duces tecum* and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records." The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, the AMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section 3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

11. CRIMINAL LAW; *EX POST FACTO LAW*, DEFINED; PROSCRIPTION AGAINST *EX POST FACTO* LAW APPLIES TO THE INTERPRETATION OF SECTION 11 OF THE ANTI-MONEY LAUNDERING ACT. — No *ex post facto* law may be enacted, and no law may be construed in such fashion as to permit a criminal prosecution offensive to the *ex post facto* clause. As applied to the AMLA, it is plain that no person may be prosecuted under the penal provisions of the AMLA for acts committed prior to the enactment of the law on 17 October 2001. As much was understood by the lawmakers since they deliberated upon the AMLA, and indeed there is no serious dispute on that point. Does the proscription against *ex post facto* laws apply to the interpretation of Section 11, a provision which does not provide for a penal sanction but which merely authorizes the inspection of suspect accounts and deposits? The answer is in the affirmative. In this jurisdiction, we have defined an *ex post facto* law as one which either: "(1) makes criminal an act done before the passage of the law

and which was innocent when done, and punishes such an act; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and (6) **deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.**" Prior to the enactment of the AMLA, the fact that bank accounts or deposits were involved in activities later on enumerated in Section 3 of the law did not, by itself, remove such accounts from the shelter of absolute confidentiality. Prior to the AMLA, in order that bank accounts could be examined, there was need to secure either the written permission of the depositor or a court order authorizing such examination, assuming that they were involved in cases of bribery or dereliction of duty of public officials, or in a case where the money deposited or invested was itself the subject matter of the litigation. The passage of the AMLA stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to the account holder. For that reason, the application of the bank inquiry order as a means of inquiring into records of transactions entered into prior to the passage of the AMLA would be constitutionally infirm, offensive as it is to the *ex post facto* clause.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Saguisag Carao and Associates and *Diosdado N. Silva* for P.D. Alvarez.

Madrid & Associates for L.G. Cheng.

D E C I S I O N

TINGA, *J.*:

The present petition for *certiorari* and prohibition under Rule 65 assails the orders and resolutions issued by two different courts in two different cases. The courts and cases in question are the Regional Trial Court of Manila, Branch 24, which heard SP Case No. 06-114200[1] and the Court of Appeals, Tenth Division, which heared CA-G.R. SP No. 95198.[2] Both cases arose as part of the aftermath of the ruling of this Court in *Agan v. PIATCO* [3] nullifying the concession agreement awarded to the Philippine International Airport Terminal Corporation (PIATCO) over the Ninoy Aquino International Airport — International Passenger Terminal 3 (NAIA 3) Project.

I.

Following the promulgation of *Agan*, a series of investigations concerning the award of the NAIA 3 contracts to PIATCO were undertaken by the Ombudsman and the Compliance and Investigation Staff (CIS) of petitioner Anti-Money Laundering Council (AMLC). On 24 May 2005, the Office of the Solicitor General (OSG) wrote the AMLC requesting the latter's assistance "in obtaining more evidence to completely reveal the financial trail of corruption surrounding the [NAIA 3] Project," and also noting that petitioner Republic of the Philippines was presently defending itself in two international arbitration cases filed in relation to the NAIA 3 Project.[4] The CIS conducted an intelligence

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[1] Entitled "*In the Matter of the Application for An Order Allowing An Inquiry Into Certain Bank Accounts or Investments and Related Web of Accounts, The Republic of the Philippines Represented by the Anti-Money Laundering Council, Applicant.*"

[2] Entitled "*Lilia Cheng v. Republic of the Philippines represented by the Anti-Money Laundering Council (AMLC), Hon. Antonio M. Eugenio, As Presiding Judge of the RTC Manila, Br. 24; Hon. Sixto Marella, Jr., as Presiding Judge of RTC, Makati City, Br. 38; and John Does.*"

[3] G.R. No. 155001.

[4] *Rollo*, p. 96.

database search on the financial transactions of certain individuals involved in the award, including respondent Pantaleon Alvarez (Alvarez) who had been the Chairman of the PBAC Technical Committee, NAIA-IPT3 Project.[5] By this time, Alvarez had already been charged by the Ombudsman with violation of Section 3(j) of R.A. No. 3019.[6] The search revealed that Alvarez maintained eight (8) bank accounts with six (6) different banks.[7]

On 27 June 2005, the AMLC issued Resolution No. 75, Series of 2005,[8] whereby the Council resolved to authorize the Executive Director of the AMLC "to sign and verify an application to inquire into and/or examine the [deposits] or investments of Pantaleon Alvarez, Wilfredo Trinidad, Alfredo Liongson, and Cheng Yong, and their related web of accounts wherever these may be found, as defined under Rule 10.4 of the Revised Implementing Rules and Regulations;" and to authorize the AMLC Secretariat "to conduct an inquiry into subject accounts once the Regional Trial Court grants the application to inquire into and/or examine the bank accounts" of those four individuals.[9] The resolution enumerated the particular bank accounts of Alvarez, Wilfredo Trinidad (Trinidad), Alfredo Liongson (Liongson) and Cheng Yong which were to be the subject of the inquiry.[10] The rationale for the said resolution was founded on the cited findings of the CIS that amounts were transferred from a Hong

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[5] *Id*. at 97.

[6] 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:

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

[7] *Rollo*, p. 98.

[8] *Id*. at 96-100.

[9] *Id*. at 99-100.

[10] *Id*. at 98.

Kong bank account owned by Jetstream Pacific Ltd. Account to bank accounts in the Philippines maintained by Liongson and Cheng Yong.[11] The Resolution also noted that "[b]y awarding the contract to PIATCO despite its lack of financial capacity, Pantaleon Alvarez caused undue injury to the government by giving PIATCO unwarranted benefits, advantage, or preference in the discharge of his official administrative functions through manifest partiality, evident bad faith, or gross inexcusable negligence, in violation of Section 3(e) of Republic Act No. 3019."[12]

Under the authority granted by the Resolution, the AMLC filed an application to inquire into or examine the deposits or investments of Alvarez, Trinidad, Liongson and Cheng Yong before the RTC of Makati, Branch 138, presided by Judge (now Court of Appeals Justice) Sixto Marella, Jr. The application was docketed as AMLC No. 05-005.[13] The Makati RTC heard the testimony of the Deputy Director of the AMLC, Richard David C. Funk II, and received the documentary evidence of the AMLC.[14] Thereafter, on 4 July 2005, the Makati RTC rendered an Order (Makati RTC bank inquiry order) granting the AMLC the authority to inquire and examine the subject bank accounts of Alvarez, Trinidad, Liongson and Cheng Yong, the trial court being satisfied that there existed "[p]robable cause [to] believe that the deposits in various bank accounts, details of which appear in paragraph 1 of the Application, are related to the offense of violation of Anti-Graft and Corrupt Practices Act now the subject of criminal prosecution before the Sandiganbayan as attested to by the Informations, Exhibits C, D, E, F, and G."[15] Pursuant to the Makati RTC bank inquiry order, the CIS proceeded to inquire and examine the deposits, investments and related web accounts of the four.[16]

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[11] *Id*.

[12] *Id.* at 99.

[13] *Id.* at 101.

[14] *Id*.

[15] *Id*.

[16] *Id.* at 27.

Meanwhile, the Special Prosecutor of the Office of the Ombudsman, Dennis Villa-Ignacio, wrote a letter dated 2 November 2005, requesting the AMLC to investigate the accounts of Alvarez, PIATCO, and several other entities involved in the nullified contract. The letter adverted to probable cause to believe that the bank accounts "were used in the commission of unlawful activities that were committed" in relation to the criminal cases then pending before the Sandiganbayan.[17] Attached to the letter was a memorandum "on why the investigation of the [accounts] is necessary in the prosecution of the above criminal cases before the Sandiganbayan."[18]

In response to the letter of the Special Prosecutor, the AMLC promulgated on 9 December 2005 Resolution No. 121 Series of 2005,[19] which authorized the executive director of the AMLC to inquire into and examine the accounts named in the letter, including one maintained by Alvarez with DBS Bank and two other accounts in the name of Cheng Yong with Metrobank. The Resolution characterized the memorandum attached to the Special Prosecutor's letter as "extensively justif[ying] the existence of probable cause that the bank accounts of the persons and entities mentioned in the letter are related to the unlawful activity of violation of Sections 3(g) and 3(e) of Rep. Act No. 3019, as amended."[20]

Following the December 2005 AMLC Resolution, the Republic, through the AMLC, filed an application[21] before the Manila RTC to inquire into and/or examine thirteen (13) accounts and two (2) related web of accounts alleged as having been used to facilitate corruption in the NAIA 3 Project. Among said accounts were the DBS Bank account of Alvarez and the Metrobank accounts of Cheng Yong. The case was raffled to Manila RTC,

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[17] *Id.* at 104.

[18] *Id.*

[19] *Id.* at 105-107.

[20] *Id.* at 106.

[21] See *id.* at 109-110.

Branch 24, presided by respondent Judge Antonio Eugenio, Jr., and docketed as SP Case No. 06-114200.

On 12 January 2006, the Manila RTC issued an Order (Manila RTC bank inquiry order) granting the *Ex Parte* Application expressing therein "[that] the allegations in said application to be impressed with merit, and in conformity with Section 11 of R.A. No. 9160, as amended, otherwise known as the Anti-Money Laundering Act (AMLA) of 2001 and Rules 11.1 and 11.2 of the Revised Implementing Rules and Regulations."[22] Authority was thus granted to the AMLC to inquire into the bank accounts listed therein.

On 25 January 2006, Alvarez, through counsel, entered his appearance[23] before the Manila RTC in SP Case No. 06-114200 and filed an Urgent Motion to Stay Enforcement of Order of January 12, 2006.[24] Alvarez alleged that he fortuitously learned of the bank inquiry order, which was issued following an *ex parte* application, and he argued that nothing in R.A. No. 9160 authorized the AMLC to seek the authority to inquire into bank accounts *ex parte*.[25] The day after Alvarez filed his motion, 26 January 2006, the Manila RTC issued an Order[26] staying the enforcement of its bank inquiry order and giving the Republic five (5) days to respond to Alvarez's motion.

The Republic filed an Omnibus Motion for Reconsideration[27] of the 26 January 2006 Manila RTC Order and likewise sought to strike out Alvarez's motion that led to the issuance of said order. For his part, Alvarez filed a Reply and Motion to Dismiss[28] the application for bank inquiry order. On 2 May 2006, the

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[22] *Id.* at 109.

[23] *Id.* at 111.

[24] *Id.* at 111-117.

[25] *Id.* at 111.

[26] *Id.* at 118.

[27] *Id.* at 119-130.

[28] *Id.* at 131-141.

Manila RTC issued an Omnibus Order[29] granting the Republic's Motion for Reconsideration, denying Alvarez's motion to dismiss and reinstating "in full force and effect" the Order dated 12 January 2006. In the omnibus order, the Manila RTC reiterated that the material allegations in the application for bank inquiry order filed by the Republic stood as "the probable cause for the investigation and examination of the bank accounts and investments of the respondents."[30]

Alvarez filed on 10 May 2006 an Urgent Motion[31] expressing his apprehension that the AMLC would immediately enforce the omnibus order and would thereby render the motion for reconsideration he intended to file as moot and academic; thus he sought that the Republic be refrained from enforcing the omnibus order in the meantime. Acting on this motion, the Manila RTC, on 11 May 2006, issued an Order[32] requiring the OSG to file a comment/opposition and reminding the parties that judgments and orders become final and executory upon the expiration of fifteen (15) days from receipt thereof, as it is the period within which a motion for reconsideration could be filed. Alvarez filed his Motion for Reconsideration[33] of the omnibus order on 15 May 2006, but the motion was denied by the Manila RTC in an Order[34] dated 5 July 2006.

On 11 July 2006, Alvarez filed an Urgent Motion and Manifestation[35] wherein he manifested having received reliable information that the AMLC was about to implement the Manila RTC bank inquiry order even though he was intending to appeal from it. On the premise that only a final and executory judgment or order could be executed or implemented, Alvarez sought

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[29] *Id*. at 142-147.

[30] *Id*. at 146.

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

[32] *Id*. at 150.

[33] *Id*. at 151-158.

[34] *Id*. at 167.

[35] *Id*. at 168-169.

that the AMLC be immediately ordered to refrain from enforcing the Manila RTC bank inquiry order.

On 12 July 2006, the Manila RTC, acting on Alvarez's latest motion, issued an Order[36] directing the AMLC "to refrain from enforcing the order dated January 12, 2006 until the expiration of the period to appeal, without any appeal having been filed." On the same day, Alvarez filed a Notice of Appeal[37] with the Manila RTC.

On 24 July 2006, Alvarez filed an Urgent *Ex Parte* Motion for Clarification.[38] Therein, he alleged having learned that the AMLC had began to inquire into the bank accounts of the other persons mentioned in the application for bank inquiry order filed by the Republic.[39] Considering that the Manila RTC bank inquiry order was issued *ex parte*, without notice to those other persons, Alvarez prayed that the AMLC be ordered to refrain from inquiring into any of the other bank deposits and alleged web of accounts enumerated in AMLC's application with the RTC; and that the AMLC be directed to refrain from using, disclosing or publishing in any proceeding or venue any information or document obtained in violation of the 11 May 2006 RTC Order.[40]

On 25 July 2006, or one day after Alvarez filed his motion, the Manila RTC issued an Order[41] wherein it clarified that "the *Ex Parte* Order of this Court dated January 12, 2006 can not be implemented against the deposits or accounts of any of the persons enumerated in the AMLC Application until the appeal of movant Alvarez is finally resolved, otherwise, the appeal would be rendered moot and academic or even nugatory."[42] In addition, the AMLC was ordered "not to disclose or publish

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[36] *Id*. at 171.

[37] *Id*. at 172-173.

[38] *Id*. at 174-175.

[39] *Id*. at 174.

[40] *Id*. at 175.

[41] *Id*. at 68-69.

[42] *Id*. at 69.

any information or document found or obtained in [v]iolation of the May 11, 2006 Order of this Court."[43] The Manila RTC reasoned that the other persons mentioned in AMLC's application were not served with the court's 12 January 2006 Order. This 25 July 2006 Manila RTC Order is the first of the four rulings being assailed through this petition.

In response, the Republic filed an Urgent Omnibus Motion for Reconsideration[44] dated 27 July 2006, urging that it be allowed to immediately enforce the bank inquiry order against Alvarez and that Alvarez's notice of appeal be expunged from the records since appeal from an order of inquiry is disallowed under the Anti money Laundering Act (AMLA).

Meanwhile, respondent Lilia Cheng filed with the Court of Appeals a Petition for *Certiorari,* Prohibition and *Mandamus* with Application for TRO and/or Writ of Preliminary Injunction[45] dated 10 July 2006, directed against the Republic of the Philippines through the AMLC, Manila RTC Judge Eugenio, Jr. and Makati RTC Judge Marella, Jr.. She identified herself as the wife of Cheng Yong[46] with whom she jointly owns a conjugal bank account with Citibank that is covered by the Makati RTC bank inquiry order, and two conjugal bank accounts with Metrobank that are covered by the Manila RTC bank inquiry order. Lilia Cheng imputed grave abuse of discretion on the part of the Makati and Manila RTCs in granting AMLC's *ex parte* applications for a bank inquiry order, arguing among others that the *ex parte* applications violated her constitutional right to due process, that the bank inquiry order under the AMLA can only be granted in connection with violations of the AMLA and that the AMLA can not apply to bank accounts opened and transactions entered into prior to the effectivity of the AMLA or to bank accounts located outside the Philippines.[47]

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[43] *Id*.

[44] *Id*. at 176-186.

[45] *Id*. at 187-249.

[46] *Id*. at 189.

[47] *Id*. at 200-201.

On 1 August 2006, the Court of Appeals, acting on Lilia Cheng's petition, issued a Temporary Restraining Order[48] enjoining the Manila and Makati trial courts from implementing, enforcing or executing the respective bank inquiry orders previously issued, and the AMLC from enforcing and implementing such orders. On even date, the Manila RTC issued an Order[49] resolving to hold in abeyance the resolution of the urgent omnibus motion for reconsideration then pending before it until the resolution of Lilia Cheng's petition for *certiorari* with the Court of Appeals. The Court of Appeals Resolution directing the issuance of the temporary restraining order is the second of the four rulings assailed in the present petition.

The third assailed ruling[50] was issued on 15 August 2006 by the Manila RTC, acting on the Urgent Motion for Clarification[51] dated 14 August 2006 filed by Alvarez. It appears that the 1 August 2006 Manila RTC Order had amended its previous 25 July 2006 Order by deleting the last paragraph which stated that the AMLC "should not disclose or publish any information or document found or obtained in violation of the May 11, 2006 Order of this Court."[52] In this new motion, Alvarez argued that the deletion of that paragraph would allow the AMLC to implement the bank inquiry orders and publish whatever information it might obtain thereupon even before the final orders of the Manila RTC could become final and executory.[53] In the 15 August 2006 Order, the Manila RTC reiterated that the bank inquiry order it had issued could not be implemented or enforced by the AMLC or any of its representatives until the appeal therefrom was finally resolved and that any enforcement thereof would be unauthorized.[54]

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[48] *Id.* at 73-77.

[49] *Id.* at 78.

[50] Order dated 15 August 2006, see *id.* at 71.

[51] *Id.* at 285-287.

[52] *Id.* at 285-286.

[53] *Id.* at 286.

[54] *Id.* at 71.

The present Consolidated Petition[55] for *certiorari* and prohibition under Rule 65 was filed on 2 October 2006, assailing the two Orders of the Manila RTC dated 25 July and 15 August 2006 and the Temporary Restraining Order dated 1 August 2006 of the Court of Appeals. Through an Urgent Manifestation and Motion[56] dated 9 October 2006, petitioner informed the Court that on 22 September 2006, the Court of Appeals hearing Lilia Cheng's petition had granted a writ of preliminary injunction in her favor.[57] Thereafter, petitioner sought as well the nullification of the 22 September 2006 Resolution of the Court of Appeals, thereby constituting the fourth ruling assailed in the instant petition.[58]

The Court had initially granted a Temporary Restraining Order[59] dated 6 October 2006 and later on a Supplemental Temporary Restraining Order [60] dated 13 October 2006 in petitioner's favor, enjoining the implementation of the assailed rulings of the Manila RTC and the Court of Appeals. However, on respondents' motion, the Court, through a Resolution[61] dated 11 December 2006, suspended the implementation of the restraining orders it had earlier issued.

Oral arguments were held on 17 January 2007. The Court consolidated the issues for argument as follows:

1. Did the RTC-Manila, in issuing the Orders dated 25 July 2006 and 15 August 2006 which deferred the implementation of its Order dated 12 January 2006, and the Court of Appeals, in issuing its Resolution dated 1 August 2006, which ordered the *status quo* in relation to the 1 July 2005 Order of the RTC-Makati and the 12 January 2006 Order of the RTC-Manila, both of which authorized the examination of bank accounts under Section 11 of Rep. Act No. 9160 (AMLA), commit grave abuse of discretion?

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[55] *Id*. at 6-65.

[56] *Id*. at 299-304.

[57] See *id*. at 310.

[58] *Id*. at 302.

[59] *Id*. at 297-298.

[60] *Id*. at 312-313.

[61] *Id*. at 549-551.

(a) Is an application for an order authorizing inquiry into or examination of bank accounts or investments under Section 11 of the AMLA *ex-parte* in nature or one which requires notice and hearing?

(b) What legal procedures and standards should be observed in the conduct of the proceedings for the issuance of said order?

(c) Is such order susceptible to legal challenges and judicial review?

2. Is it proper for this Court at this time and in this case to inquire into and pass upon the validity of the 1 July 2005 Order of the RTC-Makati and the 12 January 2006 Order of the RTC-Manila, considering the pendency of CA G.R. SP No. 95-198 (*Lilia Cheng v. Republic*) wherein the validity of both orders was challenged?[62]

After the oral arguments, the parties were directed to file their respective memoranda, which they did,[63] and the petition was thereafter deemed submitted for resolution.

II.

Petitioner's general advocacy is that the bank inquiry orders issued by the Manila and Makati RTCs are valid and immediately enforceable whereas the assailed rulings, which effectively stayed the enforcement of the Manila and Makati RTCs bank inquiry orders, are sullied with grave abuse of discretion. These conclusions flow from the posture that a bank inquiry order, issued upon a finding of probable cause, may be issued *ex parte* and, once issued, is immediately executory. Petitioner further argues that the information obtained following the bank inquiry is necessarily beneficial, if not indispensable, to the AMLC in discharging its awesome responsibility regarding the effective implementation of the AMLA and that any restraint in the disclosure of such information to appropriate agencies or other judicial fora would render meaningless the relief supplied by the bank inquiry order.

Petitioner raises particular arguments questioning Lilia Cheng's right to seek injunctive relief before the Court of Appeals,

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[62] *Id.* at 752-753.

[63] See *rollo*, pp. 786-828; 867-910; 913-936.

noting that not one of the bank inquiry orders is directed against her. Her "cryptic assertion" that she is the wife of Cheng Yong cannot, according to petitioner, "metamorphose into the requisite legal standing to seek redress for an imagined injury or to maintain an action in behalf of another." In the same breath, petitioner argues that Alvarez cannot assert any violation of the right to financial privacy in behalf of other persons whose bank accounts are being inquired into, particularly those other persons named in the Makati RTC bank inquiry order who did not take any step to oppose such orders before the courts.

Ostensibly, the proximate question before the Court is whether a bank inquiry order issued in accordance with Section 10 of the AMLA may be stayed by injunction. Yet in arguing that it does, petitioner relies on what it posits as the final and immediately executory character of the bank inquiry orders issued by the Manila and Makati RTCs. Implicit in that position is the notion that the inquiry orders are valid, and such notion is susceptible to review and validation based on what appears on the face of the orders and the applications which triggered their issuance, as well as the provisions of the AMLA governing the issuance of such orders. Indeed, to test the viability of petitioner's argument, the Court will have to be satisfied that the subject inquiry orders are valid in the first place. However, even from a cursory examination of the applications for inquiry order and the orders themselves, it is evident that the orders are inconsistent with the AMLA and the Constitution.

III.

A brief overview of the AMLA is called for.

Money laundering has been generally defined by the International Criminal Police Organization (Interpol) as "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources."[64]

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[64] See *Funds derived from criminal activities (FOPAC)*, (http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/default.asp, last visited 8 December 2007). See also J.M.B. TIROL, THE ANTI-MONEY LAUNDERING LAW OF THE PHILIPPINES Annotated (2nd ed., 2007), at 3.

Even before the passage of the AMLA, the problem was addressed by the Philippine government through the issuance of various circulars by the Bangko Sentral ng Pilipinas. Yet ultimately, legislative proscription was necessary, especially with the inclusion of the Philippines in the Financial Action Task Force's list of non-cooperative countries and territories in the fight against money laundering.[65] The original AMLA, Republic Act (R.A.) No. 9160, was passed in 2001. It was amended by R.A. No. 9194 in 2003.

Section 4 of the AMLA states that "[m]oney laundering is a crime whereby the proceeds of an unlawful activity as [defined in the law] are transacted, thereby making them appear to have originated from legitimate sources."[66] The section further provides the three modes through which the crime of money laundering is committed. Section 7 creates the AMLC and defines its powers, which generally relate to the enforcement of the AMLA provisions and the initiation of legal actions authorized in the AMLA such as civil forefeiture proceedings and complaints for the prosecution of money laundering offenses.[67]

In addition to providing for the definition and penalties for the crime of money laundering, the AMLA also authorizes certain provisional remedies that would aid the AMLC in the enforcement of the AMLA. These are the "freeze order" authorized under Section 10, and the "bank inquiry order" authorized under Section 11.

Respondents posit that a bank inquiry order under Section 11 may be obtained only upon the pre-existence of a money laundering offense case already filed before the courts.[68] The conclusion is based on the phrase "upon order of any competent court in cases of violation of this Act," the word "cases" generally understood as referring to actual cases pending with the courts.

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[65] TIROL, *supra* note 64, at 4-6. The Financial Action Task Force was established in 1989 by the so-called Group of 7 countries to formulate and encourage the adoption of international standards and measures to fight money laundering and related activities. *Id*. at 28.

[66] Republic Act No. 9160 (2002), Sec. 4.

[67] Republic Act No. 9160 (2002), Secs. 7(3) and (4).

[68] See *rollo*, pp. 809-810, 932.

We are unconvinced by this proposition, and agree instead with the then Solicitor General who conceded that the use of the phrase "in cases of" was unfortunate, yet submitted that it should be interpreted to mean "in the event there are violations" of the AMLA, and not that there are already cases pending in court concerning such violations.[69] If the contrary position is adopted, then the bank inquiry order would be limited in purpose as a tool in aid of litigation of live cases, and wholly inutile as a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the AMLA. Should that be the situation, in all likelihood the AMLC would be virtually deprived of its character as a discovery tool, and thus would become less circumspect in filing complaints against suspect account holders. After all, under such set-up the preferred strategy would be to allow or even encourage the indiscriminate filing of complaints under the AMLA with the hope or expectation that the evidence of money laundering would somehow surface during the trial. Since the AMLC could not make use of the bank inquiry order to determine whether there is evidentiary basis to prosecute the suspected malefactors, not filing any case at all would not be an alternative. Such unwholesome set-up should not come to pass. Thus Section 11 cannot be interpreted in a way that would emasculate the remedy it has established and encourage the unfounded initiation of complaints for money laundering.

Still, even if the bank inquiry order may be availed of without need of a pre-existing case under the AMLA, it does not follow that such order may be availed of *ex parte*. There are several reasons why the AMLA does not generally sanction *ex parte* applications and issuances of the bank inquiry order.

IV.

It is evident that Section 11 does not specifically authorize, as a general rule, the issuance *ex parte* of the bank inquiry order. We quote the provision in full:

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[69] *Id.* at 600-601.

SEC. 11. Authority to Inquire into Bank Deposits. — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non bank financial institution upon order of any competent court in cases of violation of this Act, **when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)1, (2) and (12).**

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit of investment with any banking institution or non bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.[70] (Emphasis supplied)

Of course, Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom,[71] certain violations of the Comprehensive Dangerous Drugs Act of 2002,[72] hijacking and other violations under R.A. No. 6235, destructive arson and murder. Since such special circumstances do not apply in this case, there is no need for us to pass comment on this proviso. Suffice it to say, the proviso contemplates a situation distinct from that which presently confronts us, and for purposes of the succeeding discussion, our reference to Section 11 of the AMLA excludes said proviso.

In the instances where a court order is required for the issuance of the bank inquiry order, nothing in Section 11 specifically authorizes that such court order may be issued *ex parte*. It might be argued that this silence does not preclude the *ex parte*

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[70] Republic Act No. 9194 (2003), Sec. 11.

[71] Under Article 267 of the Revised Penal Code.

[72] Particularly Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 thereof.

issuance of the bank inquiry order since the same is not prohibited under Section 11. Yet this argument falls when the immediately preceding provision, Section 10, is examined.

> ***SEC. 10. Freezing of Monetary Instrument or Property***.— The Court of Appeals, upon **application *ex parte*** by the AMLC and after determination that **probable cause** exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a **freeze order which shall be effective immediately**. The freeze order shall be for a period of twenty (20) days unless extended by the court.[73]

Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to authorize an *ex parte* application for the provisional relief therein, a circumstance absent in Section 11. If indeed the legislature had intended to authorize *ex parte* proceedings for the issuance of the bank inquiry order, then it could have easily expressed such intent in the law, as it did with the freeze order under Section 10.

Even more tellingly, the current language of Sections 10 and 11 of the AMLA was crafted at the same time, through the passage of R.A. No. 9194. Prior to the amendatory law, it was the AMLC, not the Court of Appeals, which had authority to issue a freeze order, whereas a bank inquiry order always then required, without exception, an order from a competent court.[74] It was through the same enactment that *ex parte* proceedings were introduced for the first time into the AMLA, in the case of the freeze order which now can only be issued by the Court

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[73] Republic Act No. 9194 (2003), Sec. 10.

[74] Unlike in the present law which authorizes the issuance without need of judicial order when there is probable cause that the deposits are involved in such specifically enumerated crimes as kidnapping, hijacking, destructive arson and murder, and violations of some provisions of the Dangerous Drugs Act of 2002. See Sec. 11, R.A. No. 9194, in connection with Section 3(i).

of Appeals. It certainly would have been convenient, through the same amendatory law, to allow a similar *ex parte* procedure in the case of a bank inquiry order had Congress been so minded. Yet nothing in the provision itself, or even the available legislative record, explicitly points to an *ex parte* judicial procedure in the application for a bank inquiry order, unlike in the case of the freeze order.

That the AMLA does not contemplate *ex parte* proceedings in applications for bank inquiry orders is confirmed by the present implementing rules and regulations of the AMLA, promulgated upon the passage of R.A. No. 9194. With respect to freeze orders under Section 10, the implementing rules do expressly provide that the applications for freeze orders be filed *ex parte*,[75] but no similar clearance is granted in the case of inquiry orders under Section 11.[76] These implementing rules were promulgated by the Bangko Sentral ng Pilipinas, the Insurance Commission

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[75] ***"Rule 10.1.*** When the AMLC may apply for the freezing of any monetary instrument or property.

(a) after an investigation conducted by the AMLC and upon determination that **probable cause** exists that a monetary instrument or property is in any way related to any unlawful activity as defined under Section 3(i). The AMLC may file an ***ex-parte*** **application before the the Court of Appeals for the issuance of a freeze order** on any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity to which said monetary instrument or property is any way related." Rule 10.1, Revised Implementing Rules And Regulations R.A. No. 9160, As Amended By R.A. No. 9194. (Emphasis supplied)

[76] See Rule 11.1, Revised Implementing Rules And Regulations R.A. No. 9160, As Amended By R.A. No. 9194. "*Rule 11.1. Authority to Inquire into Bank Deposits With Court Order.* Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution AND THEIR SUBSIDIARIES AND AFFILIATES upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments involved are related to an unlawful activity as defined in Section 3(j) hereof or a money laundering offense under Section 4 hereof; except in cases as provided under Rule 11.2."

and the Securities and Exchange Commission,[77] and if it was the true belief of these institutions that inquiry orders could be issued *ex parte* similar to freeze orders, language to that effect would have been incorporated in the said Rules. This is stressed not because the implementing rules could authorize *ex parte* applications for inquiry orders despite the absence of statutory basis, but rather because the framers of the law had no intention to allow such *ex parte* applications.

Even the Rules of Procedure adopted by this Court in A.M. No. 05-11-04-SC[78] to enforce the provisions of the AMLA specifically authorize *ex parte* applications with respect to freeze orders under Section 10[79] but make no similar authorization with respect to bank inquiry orders under Section 11.

The Court could divine the sense in allowing *ex parte* proceedings under Section 10 and in proscribing the same under Section 11. A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3(i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.

On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks

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[77] Republic Act No. 9160 (See Section 18, AMLA).

[78] Effective 15 December 2005.

[79] See Title VIII, Sec. 44, Rule Of Procedure In Cases Of Civil Forfeiture, Asset Preservation, And Freezing Of Monetary Instrument, Property, Or Proceeds Representing, Involving, Or Relating To An Unlawful Activity Or Money Laundering Offense Under Republic Act No. 9160, As Amended.

or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.

Interestingly, petitioner's memorandum does not attempt to demonstrate before the Court that the bank inquiry order under Section 11 may be issued *ex parte*, although the petition itself did devote some space for that argument. The petition argues that the bank inquiry order is "a special and peculiar remedy, drastic in its name, and made necessary because of a public necessity . . . [t]hus, by its very nature, the application for an order or inquiry must necessarily, be *ex parte*." This argument is insufficient justification in light of the clear disinclination of Congress to allow the issuance *ex parte* of bank inquiry orders under Section 11, in contrast to the legislature's clear inclination to allow the *ex parte* grant of freeze orders under Section 10.

Without doubt, a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense.[80] Still, the account holder so alerted will in fact be unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole-hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner.

V.

The necessary implication of this finding that Section 11 of the AMLA does not generally authorize the issuance *ex parte* of the bank inquiry order would be that such orders cannot be

[80] Republic Act No. 9160 (2002), Sec. 11.

issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order. Without such a consequence, the legislated distinction between *ex parte* proceedings under Section 10 and those which are not *ex parte* under Section 11 would be lost and rendered useless.

There certainly is fertile ground to contest the issuance of an *ex parte* order. Section 11 itself requires that it be established that "there is probable cause that the deposits or investments are related to unlawful activities," and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word "determination" implies deliberation and is, in normal legal contemplation, equivalent to "the decision of a court of justice."[81]

The court receiving the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact. The account holder would be certainly capable of contesting such probable cause if given the opportunity to be apprised of the pending application to inquire into his account; hence a notice requirement would not be an empty spectacle. It may be so that the process of obtaining the inquiry order may become more cumbersome or prolonged because of the notice requirement, yet we fail to see any unreasonable burden cast by such circumstance. After all, as earlier stated, requiring notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank.

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[81] See *J.* Tinga, Concurring and Dissenting, *Gonzales v. Abaya*, G.R. No. 164007, 10 August 2006, 498 SCRA 445, 501; citing 12 Words and Phrases (1954 ed.), pp. 478-479 and 1 BOUVIER'S LAW DICTIONARY (8th ed., 1914), p. 858.

Petitioner argues that a bank inquiry order necessitates a finding of probable cause, a characteristic similar to a search warrant which is applied to and heard *ex parte*. We have examined the supposed analogy between a search warrant and a bank inquiry order yet we remain to be unconvinced by petitioner.

The Constitution and the Rules of Court prescribe particular requirements attaching to search warrants that are not imposed by the AMLA with respect to bank inquiry orders. A constitutional warrant requires that the judge personally examine under oath or affirmation the complainant and the witnesses he may produce,[82] such examination being in the form of searching questions and answers.[83] Those are impositions which the legislative did not specifically prescribe as to the bank inquiry order under the AMLA, and we cannot find sufficient legal basis to apply them to Section 11 of the AMLA. Simply put, a bank inquiry order is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property.

Even as the Constitution and the Rules of Court impose a high procedural standard for the determination of probable cause for the issuance of search warrants which Congress chose not to prescribe for the bank inquiry order under the AMLA, Congress nonetheless disallowed *ex parte* applications for the inquiry order. We can discern that in exchange for these procedural standards normally applied to search warrants, Congress chose instead to legislate a right to notice and a right to be heard — characteristics of judicial proceedings which are not *ex parte*. Absent any demonstrable constitutional infirmity, there is no reason for us to dispute such legislative policy choices.

VI.

The Court's construction of Section 11 of the AMLA is undoubtedly influenced by right to privacy considerations. If sustained, petitioner's argument that a bank account may be inspected by the government following an *ex parte* proceeding

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[82] CONST., Art. III, Sec. 2.

[83] 2000 RULES OF CRIMINAL PROCEDURE, Rule 126, Sec. 5.

about which the depositor would know nothing would have significant implications on the right to privacy, a right innately cherished by all notwithstanding the legally recognized exceptions thereto. The notion that the government could be so empowered is cause for concern of any individual who values the right to privacy which, after all, embodies even the right to be "let alone," the most comprehensive of rights and the right most valued by civilized people.[84]

One might assume that the constitutional dimension of the right to privacy, as applied to bank deposits, warrants our present inquiry. We decline to do so. Admittedly, that question has proved controversial in American jurisprudence. Notably, the United States Supreme Court in *U.S. v. Miller*[85] held that there was no legitimate expectation of privacy as to the bank records of a depositor.[86] Moreover, the text of our Constitution has not

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[84] Perhaps the prophecy of Justice Brandeis, dissenting in *Olmstead v. U.S.*, 227 U.S. 438, 473 (1928), has come to pass: "[T]ime works changes, brings into existence new conditions and purposes." Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet…Moreover, "in the application of a constitution, our contemplation cannot be only of what has, been but of what may be." The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may someday be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home." *Id*. at 473-474.

[85] 425 U.S. 435 (1976).

[86] "Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate "expectation of privacy" in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the expressed purpose of which is to require records to be

bothered with the triviality of allocating specific rights peculiar to bank deposits.

However, sufficient for our purposes, we can assert there is a right to privacy governing bank accounts in the Philippines, and that such right finds application to the case at bar. The source of such right is statutory, expressed as it is in R.A. No. 1405 otherwise known as the Bank Secrecy Act of 1955. The right to privacy is enshrined in Section 2 of that law, to wit:

> SECTION 2. **All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature** and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation. (Emphasis supplied)

Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines.[87] Subsequent laws, including the AMLA, may have added exceptions to the Bank Secrecy Act, yet the secrecy of bank deposits still lies as the general rule. It falls within the zones of privacy recognized by our laws.[88] The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information[89] under Section 7,

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maintained because they "have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings." *Ibid*. The passage by the U.S. Congress in 1978 of the Right to Financial Privacy Act was essentially in reaction to the *Miller* ruling. Tirol, *supra* note 64, at 155.

[87] See TIROL, *supra* note 64, citing Gabriel Singson, *Law and Jurisprudence on Secrecy of Bank Deposits*, 46 Ateneo Law Journal 670, 682.

[88] See *Ople v. Torres*, 354 Phil. 948 (1998).

[89] "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government

Article III or under the requirement of full public disclosure[90] under Section 28, Article II.[91] Unless the Bank Secrecy Act is repealed or amended, the legal order is obliged to conserve the absolutely confidential nature of Philippine bank deposits.

Any exception to the rule of absolute confidentiality must be specifically legislated. Section 2 of the Bank Secrecy Act itself prescribes exceptions whereby these bank accounts may be examined by "any person, government official, bureau or office"; namely when: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) the money deposited or invested is the subject matter of the litigation. Section 8 of R.A. Act No. 3019, the Anti-Graft and Corrupt Practices Act, has been recognized by this Court as constituting an additional exception to the rule of absolute confidentiality.[92] Another exception may be found in Section 8 of R.A. Act No. 6770, or the Ombudsman Act of 1989, which empowers the Ombudsman to "[a]dminister oaths, issue subpoena and subpoena *duces tecum* and take testimony in any investigation or inquity, including the power to examine and have access to bank accounts and records.[93]

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research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

[90] "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."

[91] *Chavez v. PCGG*, 360 Phil. 133, 161, citing V Record of the Constitutional Commission 25 (1986).

[92] See *Phil. National Bank v. Gancayco, et al.*, 122 Phil. 503, 506-507 (1965).

[93] Sec. 8, Rep. Act No. 6770 (1989). In *Marquez v. Hon. Desierto*, 412 Phil. 387 (2001), the Court, interpreted this provision in line with the "absolutely confidential" nature of bank deposits under the Bank Secrecy Act, *infra*, and mandated: "there must be a pending case before a court of competent jurisdiction[;] the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction[;] the bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account

The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, the AMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section 3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom,[94] certain violations of the Comprehensive Dangerous Drugs Act of 2002,[95] hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

It cannot be successfully argued the proceedings relating to the bank inquiry order under Section 11 of the AMLA is a "litigation" encompassed in one of the exceptions to the Bank Secrecy Act which is when "the money deposited or invested is the subject matter of the litigation." The orientation of the bank inquiry order is simply to serve as a provisional relief or remedy. As earlier stated, the application for such does not entail a full-blown trial.

Nevertheless, just because the AMLA establishes additional exceptions to the Bank Secrecy Act it does not mean that the later law has dispensed with the general principle established in the older law that "[a]ll deposits of whatever nature with banks or banking institutions in the Philippines x x x are hereby considered as of an absolutely confidential nature."[96] Indeed, by force of statute, all bank deposits are absolutely confidential, and that nature is unaltered even by the legislated exceptions

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identified in the pending case." *Id*. at 397. With respect to the Ombudsman's power of inquiry into bank deposits, *Marquez* remains good law. See *Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, 30 November 2006, 509 SCRA 190, 224 and 226.

[94] Under Article 267 of the Revised Penal Code.

[95] Particularly Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 thereof.

[96] Republic Act No. 1405 (1955), Sec. 2.

referred to above. There is disfavor towards construing these exceptions in such a manner that would authorize unlimited discretion on the part of the government or of any party seeking to enforce those exceptions and inquire into bank deposits. If there are doubts in upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. Such a stance would persist unless Congress passes a law reversing the general state policy of preserving the absolutely confidential nature of Philippine bank accounts.

The presence of this statutory right to privacy addresses at least one of the arguments raised by petitioner, that Lilia Cheng had no personality to assail the inquiry orders before the Court of Appeals because she was not the subject of said orders. AMLC Resolution No. 75, which served as the basis in the successful application for the Makati inquiry order, expressly adverts to Citibank Account No. 88576248 "owned by Cheng Yong and/or Lilia G. Cheng with Citibank N.A.,"[97] whereas Lilia Cheng's petition before the Court of Appeals is accompanied by a certification from Metrobank that Account Nos. 300852436-0 and 700149801-7, both of which are among the subjects of the Manila inquiry order, are accounts in the name of "Yong Cheng or Lilia Cheng."[98] Petitioner does not specifically deny that Lilia Cheng holds rights of ownership over the three said accounts, laying focus instead on the fact that she was not named as a subject of either the Makati or Manila RTC inquiry orders. We are reasonably convinced that Lilia Cheng has sufficiently demonstrated her joint ownership of the three accounts, and such conclusion leads us to acknowledge that she has the standing to assail *via certiorari* the inquiry orders authorizing the examination of her bank accounts as the orders interfere with her statutory right to maintain the secrecy of said accounts.

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[97] *Rollo*, p. 98.

[98] A copy of such certification was attached to Cheng's Comment as Annex "2". See *id*. at 421.

While petitioner would premise that the inquiry into Lilia Cheng's accounts finds root in Section 11 of the AMLA, it cannot be denied that the authority to inquire under Section 11 is only exceptional in character, contrary as it is to the general rule preserving the secrecy of bank deposits. Even though she may not have been the subject of the inquiry orders, her bank accounts nevertheless were, and she thus has the standing to vindicate the right to secrecy that attaches to said accounts and their owners. This statutory right to privacy will not prevent the courts from authorizing the inquiry anyway upon the fulfillment of the requirements set forth under Section 11 of the AMLA or Section 2 of the Bank Secrecy Act; at the same time, the owner of the accounts have the right to challenge whether the requirements were indeed complied with.

VII.

There is a final point of concern which needs to be addressed. Lilia Cheng argues that the AMLA, being a substantive penal statute, has no retroactive effect and the bank inquiry order could not apply to deposits or investments opened prior to the effectivity of Rep. Act No. 9164, or on 17 October 2001. Thus, she concludes, her subject bank accounts, opened between 1989 to 1990, could not be the subject of the bank inquiry order lest there be a violation of the constitutional prohibition against *ex post facto* laws.

No *ex post facto* law may be enacted,[99] and no law may be construed in such fashion as to permit a criminal prosecution offensive to the *ex post facto* clause. As applied to the AMLA, it is plain that no person may be prosecuted under the penal provisions of the AMLA for acts committed prior to the enactment of the law on 17 October 2001. As much was understood by the lawmakers since they deliberated upon the AMLA, and indeed there is no serious dispute on that point.

Does the proscription against *ex post facto* laws apply to the interpretation of Section 11, a provision which does not provide

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[99] CONST., Art. III, Sec. 22.

for a penal sanction but which merely authorizes the inspection of suspect accounts and deposits? The answer is in the affirmative. In this jurisdiction, we have defined an *ex post facto* law as one which either:

(1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;

(2) aggravates a crime, or makes it greater than it was, when committed;

(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;

(5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

(6) **deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty**. (Emphasis supplied)[100]

Prior to the enactment of the AMLA, the fact that bank accounts or deposits were involved in activities later on enumerated in Section 3 of the law did not, by itself, remove such accounts from the shelter of absolute confidentiality. Prior to the AMLA, in order that bank accounts could be examined, there was need to secure either the written permission of the depositor or a court order authorizing such examination, assuming that they were involved in cases of bribery or dereliction of duty of public officials, or in a case where the money deposited or invested was itself the subject matter of the litigation. The passage of the AMLA stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to

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[100] In the Matter of the Petition for the Declaration of the Petitioner's Rights and Duties under Sec. 8 of R.A. No. 6132, 146 Phil. 429, 431-432 (1970). See also *Tan v. Barrios*, G.R. Nos. 85481-82, 18 October 1990, 703.

the account holder. For that reason, the application of the bank inquiry order as a means of inquiring into records of transactions entered into prior to the passage of the AMLA would be constitutionally infirm, offensive as it is to the *ex post facto* clause.

Still, we must note that the position submitted by Lilia Cheng is much broader than what we are willing to affirm. She argues that the proscription against *ex post facto* laws goes as far as to prohibit any inquiry into deposits or investments included in bank accounts opened prior to the effectivity of the AMLA even if the suspect transactions were entered into when the law had already taken effect. The Court recognizes that if this argument were to be affirmed, it would create a horrible loophole in the AMLA that would in turn supply the means to fearlessly engage in money laundering in the Philippines; all that the criminal has to do is to make sure that the money laundering activity is facilitated through a bank account opened prior to 2001. Lilia Cheng admits that "actual money launderers could utilize the *ex post facto* provision of the Constitution as a shield" but that the remedy lay with Congress to amend the law. We can hardly presume that Congress intended to enact a self-defeating law in the first place, and the courts are inhibited from such a construction by the cardinal rule that "a law should be interpreted with a view to upholding rather than destroying it."[101]

Besides, nowhere in the legislative record cited by Lilia Cheng does it appear that there was an unequivocal intent to exempt from the bank inquiry order all bank accounts opened prior to the passage of the AMLA. There is a cited exchange between Representatives Ronaldo Zamora and Jaime Lopez where the latter confirmed to the former that "deposits are supposed to be exempted from scrutiny or monitoring if they are already in place as of the time the law is enacted."[102] That statement does indicate that transactions already in place when the AMLA was passed are indeed exempt from scrutiny through a bank inquiry

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[101] *Interpretate fienda est ut res valeat quam pereat.*

[102] *Rollo*, p. 818, citing House Committee Deliberations on 26 September 2001.

order, but it cannot yield any interpretation that records of transactions undertaken after the enactment of the AMLA are similarly exempt. Due to the absence of cited authority from the legislative record that unqualifiedly supports respondent Lilia Cheng's thesis, there is no cause for us to sustain her interpretation of the AMLA, fatal as it is to the *anima* of that law.

IX.

We are well aware that Lilia Cheng's petition presently pending before the Court of Appeals likewise assails the validity of the subject bank inquiry orders and precisely seeks the annulment of said orders. Our current declarations may indeed have the effect of preempting that petition. Still, in order for this Court to rule on the petition at bar which insists on the enforceability of the said bank inquiry orders, it is necessary for us to consider and rule on the same question which after all is a pure question of law.

WHEREFORE, the *PETITION* is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Austria-Martinez,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

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[*] As replacement of Justice Antonio T. Carpio who inhibited himself per Administrative Circular No. 84-2007.

SECOND DIVISION

[G.R. No. 174966. February 14, 2008]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **ROMEO TESTON, represented by his Attorney-in-Fact, CONRADO O. COLLARINA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MUST CONFORM TO, AND BE SUPPORTED BY BOTH THE PLEADINGS AND THE EVIDENCE, AND MUST BE IN ACCORDANCE WITH THE THEORY OF THE ACTION ON WHICH THE PLEADINGS ARE FRAMED AND THE CASE WAS TRIED; CASE AT BAR. — The Court of Appeals erred in ordering DBP to return to respondent "the ₱1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, this Court held: "x x x It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata*." Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant. x x x That rescission of a sale creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests is undisputed. However, to require DBP to return the alleged ₱1,000,000 without first giving it an opportunity to present evidence would violate the Constitutional provision that "[n]o person shall be deprived of life, liberty, **or property without due process of law** x x x." The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.

2. ID.; EVIDENCE; PROVISIONS OF SECTION 3 OF RULE 130 AND SECTION 34 OF RULE 132 OF THE RULES OF COURT, NOT COMPLIED WITH IN CASE AT BAR. — In another vein, as DBP further contends, the Court of Appeals based its order for the refund of ₱1,000,000 on documents submitted before it. These documents, however, were not only mere photocopies but were never formally offered in evidence, contrary to the provision of Section 3 of Rule 130 of the Rules of Court and Section 34 of Rule 132 of the same Rules which respectively read: "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 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. SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for petitioner.
Reynaldo L. Herrera for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

By a Deed of Conditional Sale dated June 15, 1987, Romeo Teston (respondent) purchased on installment basis from petitioner, Development Bank of the Philippines (DBP), two

(2) parcels of land situated in Mandaon, Masbate, covered by Transfer Certificate of Title Nos. T-6176 and T-6177.

Respondent defaulted in the payment of his amortizations which had amounted to ₱3,727,435.57 as of September 1990. The DBP thus rescinded their contract by letter dated September 24, 1990 addressed to respondent.

DBP soon transferred the two (2) parcels of land to the government in compliance with Republic Act No. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW of 1988) and Executive Order 407 dated June 14, 1990 (ACCELERATING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS, PASTURE LANDS, FISHPONDS, AGRO-FORESTRY LANDS AND OTHER LANDS OF THE PUBLIC DOMAIN SUITABLE FOR AGRICULTURE).[1]

It turned out that on December 1, 1988, respondent had voluntarily offered the two parcels of land for inclusion in the Comprehensive Agrarian Reform Program (CARP).

On September 18, 1995, respondent filed before the Department of Agrarian Reform Adjudication Board (DARAB) Regional Office in Legazpi City a Petition[2] against DBP and the Land Bank of the Philippines (Land Bank), alleging that under Republic Act No. 6657, his obligation to DBP was assumed by the government through the Land Bank after the two parcels of land became covered by the CARP, and that the operation of said law extinguished DBP's right to rescind the sale.

Respondent thus prayed that judgment be rendered:

1. Declaring that the right of the respondent DBP to rescind the Deed of Conditional Sale for non-payment of amortization was extinguished by operation of law;

2. That the Land Bank be ordered to pay the just compensation of the property which the Special Agrarian Court may

[1] DARAB records, p. 30. The pagination of the DARAB records folder starts from page 84 to 52, backwards, then starts again from page 1 to 51 in the correct order.

[2] *Id*. at 1-4.

> determine to be paid to the petitioner after deducting the balance of the petitioner to the DBP.[3]

In its Answer/Position Paper,[4] DBP alleged that, among other things, since respondent had not acquired title to the two parcels of land, he had no right to voluntarily offer them to the CARP.

The Land Bank raised substantially the same defenses as those raised by DBP.[5]

By Order of March 30, 1998, the DARAB Regional Adjudicator dismissed respondent's petition in this wise:

> Petitioner has never been the owner of the land, hence could not have validly offered the property under the [Voluntary Offer to Sell] scheme. Under Section 72 of Republic Act No. 6657, "*Other claims*" can not refer to payment of amortizations, more specifically if such claim is made after the rescission of the contract. Petitioner may well have questioned the rescission of the contract in 1990 if he felt aggrieved by it and should not have allowed five (5) years to elapse before acting on the same. This creates the presumption that the rescission was reasonable and valid and the non-impairment of contracts must be respected.
>
> As against Land Bank, petitioner has no right of action whatsoever, as there is nothing Land Bank could act on to favor their petition.
>
> In fine, DBP being still the owner, the government cannot step in and assume the obligation to pay petitioner's amortization after his default to make him the owner of the land and to bar DBP from rescinding the conditional sale. x x x[6] (Italics in the original; underscoring supplied)

On appeal, the DARAB **affirmed** the Regional Adjudicator's decision, thus:

> There is no doubt that the title to the subject property has not been transferred to petitioner-appellant. The contract which he entered

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[3] *Id*. at 2.

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

[5] *Vide id*. at 35.

[6] *Id*. at 41-42.

into with the DBP is a conditional sale, the transfer of property being conditioned upon compliance with the terms of the sale, specifically the payment in full of the purchase price. As petitioner-appellant failed to fulfill his obligation, DBP rescinded the conditional Sale. Thus, petitioner-appellant has lost whatever right he may have over the property pursuant to the contract. It is clear on the records that the Deed of Conditional Sale dated July 15, 1987 was rescinded on September 24, 1990 or long before the property was turned over to the DAR on November 29, 1990. Evidently, petitioner-appellant had long lost his interest over the property in question when the same was turned over to the national government. Hence, petitioner-appellant could not have validly offered the property under the Voluntary Offer to Sell (VOS) scheme.

Moreover, the assertion of appellant that Section 72 of RA No. 6657 "extinguishes his obligation to pay full amount to the DBP because it is already assumed by DAR or LBP is misplaced. Section 72 provides:

> **"Section 72 Lease, Management, Grower or Service Contract, Mortgages and *Other Claims*"**
>
> **x x x x x x x x x**
>
> **(b) Mortgages and other claims registered with the [Register] of Deeds shall be assumed by the government to an amount equivalent to the landowner's compensation value as provided in this Act"** (Underscoring supplied.)

Surely, the other claims alluded to by law refer to payment of amortizations under a contract of sale which have not been extinguished by rescission. The government cannot assume an obligation which does not exist.

Lastly, this Board has jurisdiction over agricultural landholdings covered by CARP in respect to the preliminary determination and payment of just compensation. (Sec. 1(b) of RULE II, DARAB New Rules of Procedure). However, as elucidated above, since petitioner–appellee is not the owner of the disputed landholdings, [h]e has no cause of action against respondents-appellees.

WHEREFORE, the Decision of the Adjudicator *a quo* dated March 30, 1998 is **AFFIRMED** *in toto*.[7] (Emphasis in the original; underscoring supplied)

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[7] *Id*. at 71-72.

Respondent assailed the DARAB decision via Petition for Review[8] before the Court of Appeals. By Decision[9] of January 11, 2006, the appellate court **modified** the trial court's decision by ordering DBP to return to respondent "the ₱1,000,000 which [respondent] paid as downpayment," following the law on rescission.

We cannot write *finis* in this case without ordering respondent DBP to return the payment made by herein petitioner in view of the rescission of the subject *Deed of Conditional Sale*. Under Article 1385 of the Civil Code, "**rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests** x x x." Hence, equity demands that the amount paid by the petitioner be returned to him.

WHEREFORE, the assailed Decision dated February 23, 2004 is **MODIFIED**. With DBP's rescission of the contract it executed with petitioner, DBP is consequently directed to return petitioner the ₱1,000,000.00 which the latter paid as down payment for the intended purchase of the subject parcels of land, plus 12% annual interest thereon. The decision stands in all other respects.[10] (Italics and underscoring in the original.)

By a Partial Motion for Reconsideration,[11] DBP questioned the order to return the ₱1,000,000 which respondent had allegedly given as down payment. Respondent, upon the other hand, filed a "Motion to Fix Date When [the ₱1,000,000 Would] Earn Interest."[12]

The Court of Appeals denied DBP's Motion for Partial Reconsideration. It granted respondent's motion and accordingly held that interest on the ₱1,000,000 would accrue upon the finality of the judgment until full payment.[13]

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[8] CA *rollo*, pp. 2-12; 40-49.

[9] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, *id*. at 181-190.

[10] *Id*. at 189-190.

[11] *Id*. at 197-205.

[12] *Id*. at 206-208.

[13] *Id*. at 219-222.

Hence, DBP's present Petition for Review on *Certiorari*[14] faulting the appellate court to have erred

I. . . . WHEN IT ORDERED DBP TO RETURN THE ALLEGED DOWNPAYMENT MADE BY PETITIONER IN THE ALLEGED AMOUNT OF ₱1,000,000.00 AS THIS WAS NEITHER RAISED AS AN ISSUE IN THE TRIAL COURT NOR IN PRIVATE RESPONDENT'S AMENDED PETITION FOR REVIEW IN THE COURT OF APPEALS. IT WAS NOT EVEN ALLEGED AS ONE OF PRIVATE RESPONDENT'S "ASSIGNED ERRORS."

II. . . . IN ORDERING THE REFUND OF ₱1,000,000.00 BASED MERELY ON DOCUMENTS SUBMITTED IN THE APPELLATE COURT BUT WERE NOT PROPERLY PRESENTED AND OFFERED AS EVIDENCE IN THE DARAB PROCEEDINGS. HENCE, THERE IS CERTAINLY NO BASIS FOR THE COURT TO ORDER DBP TO RETURN THE AMOUNT OF ₱1,000,000.00 TO PRIVATE RESPONDENT.

III. GRANTING *ARGUENDO* THAT THE ISSUE ON DEPOSIT MAY PROPERLY BE CONSIDERED, [IN] FAIL[ING] TO CONSIDER THAT UNDER THE LAW BETWEEN THE PARTIES, PETITIONER DBP IS UNDER NO OBLIGATION TO RETURN THE ALLEGED DEPOSIT OF ₱1,000,000.00 WHICH PRIVATE RESPONDENT ALLEGEDLY PAID AS DOWNPAYMENT, BECAUSE THE DEED OF CONDITIONAL SALE DATED JULY 15, 1987 EXPRESSLY PROVIDES THAT IN CASE OF RESCISSION OF CONTRACT, ALL SUMS OF MONEY UNDER THE CONTRACT (INCLUDING DEPOSIT) SHALL BE CONSIDERED AND TREATED AS RENTALS FOR THE USE OF THE PROPERTY, [AND]

PROFFERING THAT . . . UNDER THE SAME DEED, THE PRIVATE RESPONDENT IS DEEMED TO HAVE WAIVED ALL RIGHT/S TO ASK OR DEMAND RETURN OF THE SAID DEPOSIT.[15] (Emphasis in the original)

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[14] *Rollo*, pp. 29-49.

[15] *Id.* at 36-37.

The petition is meritorious.

The Court of Appeals erred in ordering DBP to return to respondent "the ₱1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*,[16] this Court held:

> x x x It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata*.[17] (Italics in original)

Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.[18] The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[19]

Respondent invokes[20] this Court's pronouncement in *Heirs of Ramon Durano, Sr. v. Uy*[21] that "[t]he Court of Appeals is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case."[22] He argues that the return of "the ₱1,000,000 downpayment" is a necessary consequence of the rescission of the sale.[23]

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[16] 428 Phil. 208 (2002).

[17] *Id.* at 225.

[18] 61B Am Jur 2d 201-202.

[19] *Id.* at 202.

[20] *Rollo*, p. 172.

[21] 398 Phil. 125 (2000).

[22] *Id.* at 147.

[23] *Vide rollo*, pp. 175-176.

That rescission of a sale creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests is undisputed.[24] However, to require DBP to return the alleged ₱1,000,000 without first giving it an opportunity to present evidence would violate the Constitutional provision that "[n]o person shall be deprived of life, liberty, **or property without due process of law** x x x."[25] The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[26]

In the case at bar, DBP had no opportunity to present evidence on its behalf. As it contends,

> Had [the] issue been raised in the lower court, petitioner DBP could have contested and presented evidence against the returning of the alleged deposit to private respondent. DBP could have shown that private respondent **did not make a deposit in the amount of ₱1,000,000.00** but **only ₱700,000.00** as the check for ₱300,000.00 was returned to him. Furthermore, the amount of ₱700,000.00, as previously discussed, was applied to **rental** pursuant to the Deed of Conditional Sale dated July 15, 1987. Since this was not raised as an issue, DBP has been denied the opportunity to rebut the belated claim of the private respondent. Manifestly, the Decision of the Appellate Court for the return of the alleged deposit made by the private respondent is baseless and was clearly in contravention of the basic rules of fair play, justice and due process.[27] (Emphasis and underscoring supplied)

In another vein, as DBP further contends, the Court of Appeals based its order for the refund of ₱1,000,000 on documents submitted before it. These documents, however, were not only mere photocopies but were never formally offered in evidence, contrary to the provision of Section 3 of Rule 130 of the Rules

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[24] *Vide* CIVIL CODE, Article 1385.

[25] 1987 CONSTITUTION, Article III, Section 1 (emphasis supplied).

[26] *Mutuc v. Court of Appeals*, G.R. No. L-48108, September 26, 1990, 190 SCRA 43, 49 (citations omitted).

[27] *Rollo*, p. 44.

of Court and Section 34 of Rule 132 of the same Rules which respectively read:

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 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.

SEC. 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

WHEREFORE, the petition is *GRANTED*. The January 11, 2006 decision of the Court of Appeals is *REVERSED and SET ASIDE* and the decision of the Department of Agrarian Reform Adjudication Board is *REINSTATED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

EN BANC

[G.R. Nos. 154297-300. February 15, 2008]

PUBLIC ATTORNEY'S OFFICE, MAXIMO B. USITA, JR. and WILFREDO C. ANDRES, *petitioners, vs.* **THE HON. SANDIGANBAYAN, SPECIAL DIVISION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED. — Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR. — The Court holds that respondent did not gravely abuse its discretion in issuing the subject Resolutions as the issuance is not characterized by caprice or arbitrariness. At the time of PAO's appointment, the accused did not want to avail themselves of any counsel; hence, respondent exercised a judgment call to protect the constitutional right of the accused to be heard by themselves and counsel during the trial of the cases. Subsequently, respondent reduced the number of PAO lawyers directed to represent the accused, in view of the engagement of new counsels *de parte*, but retained two of the eight PAO lawyers obviously to meet such possible exigency as the accused again relieving some or all of their private counsels.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for *certiorari* alleging that the Sandiganbayan, Special Division, committed grave abuse of discretion amounting

to lack or excess of jurisdiction in issuing the Resolutions dated May 28, 2002 and June 11, 2002 retaining petitioners, Atty. Maximo B. Usita, Jr. and Atty. Wilfredo C. Andres of the Public Attorney's Office (PAO), as counsels *de oficio* of then accused President Joseph Estrada and his son, Jose "Jinggoy" Estrada.

The facts are as follows:

On March 15 and 18, 2002, Atty. Persida V. Rueda-Acosta, Chief Public Attorney of PAO personally appeared before respondent Special Division of the Sandiganbayan[1] to request the relief of the appearance of PAO as *de oficio* counsel for accused President Joseph Estrada and Jose Estrada in their criminal cases before the Sandigabayan. However, the request was denied.

On May 8, 2002, the Chief Public Attorney filed an Urgent and *Ex-Parte* Motion to be Relieved as Court-Appointed Counsel with the Special Division of the Sandiganbayan, praying that she be relieved of her duties and responsibilities as counsel *de oficio* for the said accused on the ground that she had a swelling workload consisting of administrative matters and that the accused are not indigent persons; hence, they are not qualified to avail themselves of the services of PAO.

On May 9, 2002, respondent Court found the reasons of the Chief Public Attorney to be plausible and relieved the Chief Public Attorney as counsel *de oficio* of former President Joseph Estrada and Mayor Jose Estrada.

On May 14, 2002, the remaining eight PAO lawyers filed an *Ex-Parte* Motion To Be Relieved As Court-Appointed Counsels with respondent Court on the ground that the accused, former President Joseph Estrada and Jose Estrada, are not indigents; therefore, they are not qualified to avail themselves of the services of PAO.

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[1] The respondent Special Division is a special court created through a Supreme Court Administrative Circular exclusively to hear and decide the cases of former President Joseph Estrada, *et al.*

On May 28, 2002, respondent Court issued a Resolution denying the motion, but retaining two of the eight PAO lawyers, namely, the petitioners Atty. Usita, Jr. and Atty. Andres. The pertinent portion of the Resolution reads:

> . . . There being no compelling and sufficient reasons to abandon the Court's previous rulings, the instant motion is hereby DENIED. While it is true that a similar motion filed by the PAO Chief Public Attorney Persida Rueda-Acosta was granted per Court's Resolution of May 9, 2002, the rationalization advanced by Atty. Rueda was found meritorious by the Court in that there was unexpected upsurge in her administrative workload as head of the office including the administration and supervision of more or less 1,000 PAO lawyers and 700 staff nationwide and many other functions which require her immediate attention and undivided time.
>
> Nonetheless, considering that there are eight (8) *de oficio* counsels from the Public Attorney's Office (PAO), the Court, in the exercise of its sound discretion, deems it proper to reduce their number and retain only two (2) of them, namely: Atty. Wilfredo C. Andres and Atty. Maximo B. Usita to continue their duties and responsibilities as counsels *de oficio* for accused Joseph and Jose "Jinggoy" Estrada.[2]

The retained lawyers of PAO joined the four Court-appointed counsels from the private sector, namely, Prospero Crescini, Justice Manuel Pamaran, Irene Jurado and Noel Malaya.

On June 4, 2002, petitioners filed a motion for reconsideration of the Resolution dated May 28, 2002.

In a Resolution dated June 10, 2002, respondent denied the motion for reconsideration, thus:

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> It appearing that the ground raised by the movants PAO lawyers are mere rehashes/reiterations of their previous arguments which the Court finds to be not valid justification for them to be relieved, either temporarily or permanently of their duties and responsibilities

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[2] *Rollo,* p. 36.

as counsels *de oficio* in these cases, the instant motion in hereby DENIED.[3]

Hence, this petition for *certiorari* alleging grave abuse of discretion by respondent in rendering the Resolutions dated May 28, 2002 and June 10, 2002.

On September 21, 2004, PAO filed a Manifestation and Compliance which informed the Court that petitioners Atty. Usita and Atty. Andres were appointed as Assistant City Prosecutors of the Quezon City Prosecutor's Office sometime in August 2002, and that PAO is left as the lone petitioner in this case.

The issue is whether or not respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the subject Resolutions retaining two PAO lawyers to act as counsels *de oficio* for the accused who are not indigent persons.

PAO contends that it is undeniable that in retaining its two PAO lawyers as counsels *de oficio* of former President Estrada and Jose Estrada, respondent Court relied upon the provisions of Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure, thus:

> Sec. 7. *Appointment of counsel de oficio*. — The Court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de oficio* such members of the bar in good standing, who, by reason of their experience and ability, can competently defend the accused.

PAO, however, submits that the power of respondent to appoint and retain PAO lawyers as counsels *de oficio* is limited by Sec. 20 of Letter of Implementation (LOI) No. 20 dated December 31, 1972 and Presidential Decree (PD) No. 1725 dated September 26, 1980, thus:

LOI No. 20

> Sec. 20. The Citizens Legal Assistance Office shall represent, free of charge, indigent persons mentioned in Republic Act No. 6035,

[3] *Id.* at 43.

or the immediate members of their family, in all civil, administrative, and criminal cases where after due investigation the interest of justice will be served thereby, except agrarian reform cases as defined by Republic Act 3844, as amended, which shall be handled by the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform, and such cases as are now handled by the Department of Labor.

PD No. 1725

WHEREAS, the Citizen's Legal Assistance Office as the law office of the Government of the Republic of the Philippines for indigent and low-income persons, performs a vital role in the implementation of the legal aid program of the State, in upholding the rule of law, in the protection and safeguarding of the institutional and statutory rights of the citizenry, and in the efficient and speedy administration of justice.

The Revised Administrative Code of 1987 renamed the Citizen's Legal Assistance Office as the Public Attorney's Office and retained its powers and functions. Section 14, Chapter 5, Title III, Book V of the said Code provides:

Sec. 14. *Public Attorney's Office (PAO).*— The Citizen's Legal Assistance Office (CLAO) is renamed Public Attorney's Office (PAO). It shall exercise the powers and functions as are now provided by law for the Citizen's Legal Assistance Office or may hereafter be provided by law.

In the implementation of the foregoing provisions of law, PAO issued Memorandum Circular No. 5, Series of 1997, as amended by Memorandum Circular No. 12, Series of 2001, and subsequently by Memorandum Circular No. 18, Series of 2002, defining who are indigent persons qualified to avail themselves of the services of PAO, thus:

Section 3. *Indigency Test*. — Taking into consideration recent surveys on the amount needed by an average Filipino to 1) buy its food consumption basket and b) pay for its household and personal expenses, the following shall be considered indigent persons:

1. Those residing in Metro Manila whose family income does not exceed ₱14,000.00 a month;

2. Those residing in other cities whose family income does not exceed ₱13,000.00 a month;

3. Those residing in all other places whose family income does not exceed ₱12,000.00 a month.

The term "family income" as herein employed shall be understood to refer to the gross income of the litigant and that of his or her spouse, but shall not include the income of the other members of the family.

PAO states that the Statement of Assets and Liabilities attached to the records of the cases of the accused show that they were not qualified to avail themselves of the services of PAO, since they could afford the services of private counsels of their own choice. It noted that the wife of former President Estrada had an income exceeding ₱14,000.

PAO argues that the only exception when it can appear on behalf of a non-indigent client is when there is no available lawyer to assist such client in a particular stage of the case, that is, during arraignment or during the taking of the direct testimony of any prosecution witness subject to cross-examination by the private counsel on record. The appearance of PAO is only provisional in those instances.

PAO asserts that the sole reliance of respondent on Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure is improper. Respondent should have not only considered the character of PAO lawyers as members of the Bar, but especially their mandate to serve only indigent persons. In so doing, the contradiction in the exercise of PAO's duties and responsibilities could have been avoided.

PAO asserts that while its lawyers are also aware of their duties under Rule 14.02 of the Code of Professional Responsibility,[4] PAO lawyers are limited by their mandate as government lawyers.

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[4] Rule 14.02. — A lawyer shall not decline, except for a serious and sufficient cause, an appointment as counsel *de oficio* or an *amicus curiae* or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

Hence, PAO submits that the subject Resolutions of respondent are not in accordance with the mandate of PAO and affect the rendition of effective legal service to a large number of its deserving clients.

In defense, respondent Special Division of the Sandiganbayan, represented by the Office of the Special Prosecutor, stated that it did not commit grave abuse of discretion since it did not act in an arbitrary, capricious and whimsical manner in issuing the subject Resolutions.

It explained that it was facing a crisis when respondent issued the subject Resolutions. At that time, the accused, former President Joseph Estrada, relieved the services of his counsels on nationwide television. Subsequently, the counsels of record of co-accused Jose Estrada withdrew, and both accused were adamant against hiring the services of new counsels because they allegedly did not believe in and trust the Sandiganbayan. The Sandiganbayan had the duty to decide the cases, but could not proceed with the trial since the accused were not assisted by counsel.

Respondent stated that, bound by its duty to protect the constitutional right of the accused to be heard by himself and counsel, it exercised its prerogative under Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure,[5] and appointed Chief Public Attorney Persida V. Rueda-Acosta of the PAO and eight other PAO lawyers, including petitioners, to act as counsels *de oficio* for the said accused. As noted earlier, the Chief Public Attorney and six PAO lawyers were later relieved from such duty, but respondent retained two PAO lawyers as counsels *de oficio* for the accused.

Considering the attendant situation at the time of the issuance of the subject Resolutions, respondent asserts that it did not act in an arbitrary, despotic, capricious or whimsical manner in

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[5] Sec. 7. *Appointment of counsel de oficio*. — The Court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de oficio* such members of the bar in good standing, who, by reason of their experience and ability, can competently defend the accused.

issuing the subject Resolutions. In appointing the PAO lawyers to act as counsels for the said accused, respondent merely acted within the prerogative granted to it by the Rules of Court in order to protect the constitutional right of the accused to be heard by himself and counsel. Respondent also merely required petitioners to perform their duty as members of the Bar and officers of the court to assist the court in the efficient administration of justice.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[6]

The Court holds that respondent did not gravely abuse its discretion in issuing the subject Resolutions as the issuance is not characterized by caprice or arbitrariness. At the time of PAO's appointment, the accused did not want to avail themselves of any counsel; hence, respondent exercised a judgment call to protect the constitutional right of the accused to be heard by themselves and counsel during the trial of the cases.

Subsequently, respondent reduced the number of PAO lawyers directed to represent the accused, in view of the engagement of new counsels *de parte*, but retained two of the eight PAO lawyers obviously to meet such possible exigency as the accused again relieving some or all of their private counsels.

In any event, since these cases of the accused in the Sandiganbayan have been finally resolved, this petition seeking that PAO, the only remaining petitioner, be relieved as counsel *de oficio* therein has become moot.

WHEREFORE, the petition is *DISMISSED* for being moot.

No costs.

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[6] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Chico-Nazario, J., no part — due to prior action.

Leonardo-de Castro, J., no part.

EN BANC

[G.R. No. 168338. February 15, 2008]

FRANCISCO CHAVEZ, *petitioner, vs.* **RAUL M. GONZALES, in his capacity as the Secretary of the Department of Justice; and NATIONAL TELECOMMUNICATIONS COMMISSION (NTC),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; RULE ON LEGAL STANDING; LIBERALLY CONSTRUED IN CASES WHERE SERIOUS CONSTITUTIONAL QUESTIONS ARE INVOLVED; CASE AT BAR. — [W]here serious constitutional questions are involved, "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside if we must, technicalities of procedure." Subsequently, this Court has repeatedly and consistently refused to wield procedural barriers as impediments to its addressing and resolving serious legal questions that greatly impact on public interest, in keeping with the Court's duty under the 1987 Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the

discretion given to them. Thus, in line with the liberal policy of this Court on *locus standi* when a case involves an issue of overarching significance to our society, we therefore brush aside technicalities of procedure and take cognizance of this petition, seeing as it involves a challenge to the most exalted of all the civil rights, the freedom of expression.

2. ID.; ID.; BILL OF RIGHTS; FREEDOM OF SPEECH, OF EXPRESSION AND OF THE PRESS; CONCEPT. — Surrounding the freedom of speech clause are various concepts that we have adopted as part and parcel of our own Bill of Rights provision on this basic freedom. What is embraced under this provision was discussed exhaustively by the Court in *Gonzales v. Commission on Elections*, in which it was held: . . . At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent. *Gonzales* further explained that the vital need of a constitutional democracy for freedom of expression is undeniable, whether as a means of assuring individual self-fulfillment; of attaining the truth; of assuring participation by the people in social, including political, decision-making; and of maintaining the balance between stability and change. As early as the 1920s, the trend as reflected in Philippine and American decisions was to recognize the broadest scope and assure the widest latitude for this constitutional guarantee. The trend represents a profound commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open. Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well — if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of

the unorthodox view, though it be hostile to or derided by others; or though such view "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.

3. ID.; ID.; ID.; FREEDOM OF SPEECH AND EXPRESSION; SCOPE. — The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority. The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative. Specifically, in *Eastern Broadcasting Corporation (DYRE) v. Dans*, this Court stated that all forms of media, whether print or broadcast, are entitled to the broad protection of the clause on freedom of speech and of expression. While all forms of communication are entitled to the broad protection of freedom of expression clause, **the freedom of film, television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspapers and other print media, x x x.**

4. ID.; ID.; ID.; ID.; LIMITS AND RESTRAINTS. — [F]reedom of expression is not an absolute, nor is it an "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom." **Thus, all speech are not treated the same.** Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant

interests of one type of speech, *e.g.*, political speech, may vary from those of another, *e.g.*, obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech. We have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized. Moreover, the techniques of reviewing alleged restrictions on speech (overbreadth, vagueness, and so on) have been applied differently to each category, either consciously or unconsciously. A study of free speech jurisprudence — whether here or abroad — will reveal that courts have developed different tests as to specific types or categories of speech in concrete situations; *i.e.*, subversive speech; obscene speech; the speech of the broadcast media and of the traditional print media; libelous speech; speech affecting associational rights; speech before hostile audiences; symbolic speech; speech that affects the right to a fair trial; and speech associated with rights of assembly and petition.

5. ID.; ID.; ID.; ID.; TESTS. — Generally, restraints on freedom of speech and expression are evaluated by either or a combination of three tests, *i.e.*, (a) the **dangerous tendency doctrine** which permits limitations on speech once a rational connection has been established between the speech restrained and the danger contemplated; (b) the **balancing of interests tests**, used as a standard when courts need to balance conflicting social values and individual interests, and requires a conscious and detailed consideration of the interplay of interests observable in a given situation of type of situation; and (c) the **clear and present danger rule** which rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."

6. ID.; ID.; ID.; FREEDOM OF THE PRESS; NATURE. — Much has been written on the philosophical basis of press freedom as part of the larger right of free discussion and expression. Its practical importance, though, is more easily grasped. It is the chief source of information on current affairs. It is the most pervasive and perhaps most powerful vehicle of opinion

on public questions. It is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances. It is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed. As Justice Malcolm wrote in *United States v. Bustos*: The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of clear conscience. Its contribution to the public weal makes freedom of the press deserving of extra protection. Indeed, the press benefits from certain ancillary rights. The productions of writers are classified as intellectual and proprietary. Persons who interfere or defeat the freedom to write for the press or to maintain a periodical publication are liable for damages, be they private individuals or public officials.

7. ID.; ID.; ID.; ID.; ASPECTS. — Philippine jurisprudence, even as early as the period under the 1935 Constitution, has recognized four aspects of freedom of the press. These are (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation.

8. ID.; ID.; ID.; ID.; FREEDOM FROM PRIOR RESTRAINTS; EXPLAINED. — ***Prior restraint*** refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of

permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts. Given that deeply ensconced in our fundamental law is the hostility against all prior restraints on speech, and any act that restrains speech is presumed invalid, and "any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows," it is important to stress not all prior restraints on speech are invalid. **Certain previous restraints may be permitted by the Constitution,** but determined only upon a careful evaluation of the challenged act as against the appropriate test by which it should be measured against.

9. ID.; ID.; ID.; ID.; ID.; CONTENT-NEUTRAL REGULATION AND CONTENT-BASED RESTRAINT, DISTINGUISHED. — [I]t is not enough to determine whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is (1) a **content-neutral** regulation, *i.e.*, merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards; or (2) a **content-based** restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech. The cast of the restriction determines the test by which the challenged act is assayed with.

10. ID.; ID.; ID.; ID.; ID.; CONTENT-NEUTRAL REGULATION; SUBJECT TO AN INTERMEDIATE APPROACH REVIEW. — When the speech restraints take the form of a **content-neutral regulation,** only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an **intermediate approach** — somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. The **test** is called **intermediate** because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. The intermediate approach has been formulated in this manner: A governmental regulation is sufficiently justified if it is within the constitutional power

of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.

11. ID.; ID.; ID.; ID.; ID.; CONTENT-BASED RESTRAINT; MEASURED AGAINST THE CLEAR AND PRESENT DANGER RULE. — [A] governmental action that restricts freedom of speech or of the press **based on content** is given the **strictest scrutiny** in light of its inherent and invasive impact. Only when the challenged act has overcome the **clear and present danger rule** will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality. Unless the government can overthrow this presumption, the **content-based** restraint will be struck down. With respect to **content-based** restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree." The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.

12. ID.; ID.; ID.; ID.; ID.; INCIDENTAL RESTRICTIONS SHOULD BE REASONABLE AND NARROWLY DRAWN TO FIT THE REGULATORY PURPOSE, WITH THE LEAST RESTRICTIVE MEANS UNDERTAKEN. — [T]he incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken. Thus, when the prior restraint partakes of a **content-neutral**

regulation, it is subjected to an intermediate review. A **content-based regulation**, however, bears a heavy presumption of invalidity and is measured against the **clear and present danger rule**. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague.

13. ID.; ID.; ID.; ID.; DICHOTOMY BETWEEN PRINT AND BROADCAST MEDIA; FEATURES. — The dichotomy between print and broadcast media traces its origins in the United States. There, broadcast radio and television have been held to have **limited** First Amendment protection, and U.S. Courts have **excluded** broadcast media from the application of the "strict scrutiny" standard that they would otherwise apply to content-based restrictions. According to U.S. Courts, the **three major reasons** why broadcast media stands apart from print media are: (a) the scarcity of the frequencies by which the medium operates [*i.e.*, airwaves are physically limited while print medium may be limitless]; (b) its "pervasiveness" as a medium; and (c) its unique accessibility to children. Because cases involving broadcast media need not follow "precisely the same approach that [U.S. courts] have applied to other media," nor go "so far as to demand that such regulations serve 'compelling' government interests," **they are decided on whether the "governmental restriction" is narrowly tailored to further a substantial governmental interest, or the intermediate test**. x x x Our cases show two distinct features of this dichotomy. ***First***, the difference in treatment, in the main, is in the regulatory scheme applied to broadcast media that is not imposed on traditional print media, and narrowly confined to unprotected speech (*e.g.*, obscenity, pornography, seditious and inciting speech), or is based on a compelling government interest that also has constitutional protection, such as national security or the electoral process. ***Second***, regardless of the regulatory schemes that broadcast media is subjected to, the Court has consistently held that the clear and present danger test applies to content-based restrictions on media, without making a distinction as to traditional print or broadcast media.

14. ID.; ID.; ID.; ID.; FREEDOM FROM PRIOR RESTRAINTS; CLEAR AND PRESENT DANGER RULE; THE TEST FOR LIMITATIONS ON FREEDOM OF EXPRESSION FOR

ALL FORMS OF MEDIA, WHETHER PRINT OR BROADCAST, WHEN THE CHALLENGED ACT IS CONTENT-BASED RESTRICTION. — It is interesting to note that the Court in [*Eastern Broadcasting Corporation (DYRE) v.] Dans* adopted the arguments found in U.S. jurisprudence to justify differentiation of treatment (*i.e.*, the scarcity, pervasiveness and accessibility to children), **but only after categorically declaring that "the test for limitations on freedom of expression continues to be the clear and present danger rule," for all forms of media, whether print or broadcast.** Indeed, a close reading of the above-quoted provisions would show that the differentiation that the Court in *Dans* referred to was narrowly restricted to what is otherwise deemed as "unprotected speech" (*e.g.*, obscenity, national security, seditious and inciting speech), or to validate a licensing or regulatory scheme necessary to allocate the limited broadcast frequencies, which is absent in print media. Thus, when this Court declared in *Dans* that the freedom given to broadcast media was "somewhat lesser in scope than the freedom accorded to newspaper and print media," it was not as to what test should be applied, but the context by which requirements of licensing, allocation of airwaves, and application of norms to unprotected speech. In the same year that the *Dans* case was decided, it was reiterated in *Gonzales v. Katigbak*, that the test to determine free expression challenges was the clear and present danger, again without distinguishing the media. x x x More recently, in resolving a case involving the conduct of exit polls and dissemination of the results by a broadcast company, we reiterated that the clear and present danger rule is the test we unquestionably adhere to issues that involve freedoms of speech and of the press. **This is not to suggest, however, that the clear and present danger rule has been applied to all cases that involve the broadcast media.** The rule applies to all media, including broadcast, but only when the challenged act is a content-based regulation that infringes on free speech, expression and the press. Indeed, in *Osmena v. COMELEC*, which also involved broadcast media, the Court refused to apply the clear and present danger rule to a COMELEC regulation of time and manner of advertising of political advertisements because the challenged restriction was content-neutral. And in a case involving due process and equal protection issues, the Court in *Telecommunications and Broadcast Attorneys*

of the Philippines v. COMELEC treated a restriction imposed on a broadcast media as a reasonable condition for the grant of the media's franchise, without going into which test would apply.

15. ID.; ID.; ID.; FREEDOM OF SPEECH OR OF THE PRESS; A GOVERNMENT ACTION THAT RESTRICTS FREEDOM OF SPEECH OR OF THE PRESS BASED ON CONTENT IS GIVEN THE STRICTEST SCRUTINY. — [A] governmental action that restricts freedom of speech or of the press **based on content** is given the **strictest scrutiny,** with the **government having the burden** of overcoming the presumed unconstitutionality by the **clear and present danger rule.** This rule applies equally to **all** kinds of media, **including broadcast media.**

16. ID.; ID.; ID.; ID.; NOT EVERY VIOLATION OF A LAW WILL JUSTIFY RESTRICTIONS IN THE EXERCISE THEREOF; EXPLAINED. — We rule that **not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press.** Our **laws are of different kinds** and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, **by itself and without more,** cannot support suppression of free speech and free press. In fine, **violation of law is just a factor**, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The **totality of the injurious effects** of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. In calling for a careful and calibrated measurement of the circumference of all these factors to determine compliance with the clear and present danger test, **the Court should not be misinterpreted as devaluing violations of law.** By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, **the need to prevent their violation cannot per se trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils.**

17. ID.; ID.; ID.; ID.; ANY ACT DONE, SUCH AS A SPEECH UTTERED, FOR AND ON BEHALF OF THE GOVERNMENT IN AN OFFICIAL CAPACITY IS COVERED BY THE RULE ON PRIOR RESTRAINT. — Any act done, such as a speech uttered, for and on behalf of the government in an official capacity is covered by the rule on prior restraint. The concept of an "act" does not limit itself to acts already converted to a formal order or official circular. Otherwise, the non formalization of an act into an official order or circular will result in the easy circumvention of the prohibition on prior restraint.

SANDOVAL-GUTIERREZ, *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH, EXPRESSION AND OF THE PRESS; JUSTIFICATIONS. — The *Universal Declaration of Human Rights* guarantees that **"everyone has the right to freedom of opinion and expression."** Accordingly, this right **"includes the freedom to hold opinions without interference and impart information and ideas through any media regardless of frontiers."** At the same time, our Constitution mandates that **"no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances."** These guarantees are testaments to the value that humanity accords to the above-mentioned freedoms — commonly summed up as **freedom of expression**. The justifications for this high regard are specifically identified by Justice Mclachlin of the Canadian Supreme Court in *Her Majesty The Queen v. Keegstra*, to wit: **(1)** Freedom of expression promotes the free flow of ideas essential to political democracy and democratic institutions, and limits the ability of the State to subvert other rights and freedoms; **(2)** it promotes a marketplace of ideas, which includes, but is not limited to, the search for truth; **(3)** it is intrinsically valuable as part of the self-actualization of speakers and listeners; and **(4)** it is justified by the dangers for good government of allowing its suppression.

2. ID.; ID.; ID.; ID.; CENSORSHIP; FORMS. — Censorship is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so,

and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey. Censorship may come in the form of **prior restraint** or **subsequent punishment. Prior restraint** means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Its most blatant form is a system of licensing administered by an executive officer. Similar to this is judicial prior restraint which takes the form of an injunction against publication. And equally objectionable as prior restraint is the imposition of license taxes that renders publication or advertising more burdensome. On the other hand, **subsequent punishment** is the imposition of liability to the individual exercising his freedom. It may be in any form, such as penal, civil or administrative penalty.

3. ID.; ID.; ID.; ID.; ID.; TESTS. — Settled is the doctrine that any system of prior restraint of expression comes to this Court bearing a presumption against its constitutional validity. The Government thus carries a heavy burden of showing justification for the enforcement of such a restraint. Various tests have been made to fix a standard by which to determine what degree of evil is sufficiently substantial to justify a resort to abridgment of the freedom of expression as a means of protection and how clear and imminent and likely the danger is. Among these tests are the *Clear and Present Danger, Balancing, Dangerous Tendency, Vagueness, Overbreadth, and Least Restrictive Means.* Philippine jurisprudence shows that we have generally adhered to the *clear and present danger test.*

4. ID.; ID.; ID.; ID.; ID.; BALANCING TEST; APPLIES TO CASE AT BAR. — The justification advanced by the NTC in issuing the Press Release is that **"the taped Conversations have not been duly authenticated nor could it be said at this time that the tape contains an accurate and truthful representation of what was recorded therein"** and that **"its continuous airing or broadcast is a continuing violation of the Anti-Wiretapping Law."** To prevent the airing of the *Garci Tapes* on the premise that their contents may or may not be true is not a valid reason for its suppression. In *New York Times v. Sullivan,* Justice William Brennan, Jr. states that the authoritative interpretation of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth — whether administered by judges, jurists,

or administrative officials — and especially not one that puts the burden of proving truth on the speaker. He stressed that **"the constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and belief which are offered."** Moreover, the fact that the tapes were obtained through violation of the *Anti-Wiretapping Law* does not make the broadcast media privy to the crime. **It must be stressed that it was a government official who initially released the *Garci Tapes*, not the media.** In view of the presence of various competing interests, I believe the present case must also be calibrated using the **balancing test.** As held in *American Communication Association v. Douds,* **"when a particular conduct us regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgement of speech, the duty of the courts is to determine which of these two conflicting interests demand the greater protection under the circumstances presented.** In the present case, perched at the one hand of the scale is the government's interest to maintain public order, while on the other hand is the interest of the public to know the truth about the last national election and to be fully informed. Which of these interests should be advanced? I believe it should be that of the people. **The right of the people to know matters pertaining to the integrity of the election process is of paramount importance.** It cannot be sideswiped by the mere speculation that a public disturbance will ensue. **Election is a sacred instrument of democracy. Through it, we choose the people who will govern us. We entrust to them our businesses, our welfare, our children, our lives.** Certainly, each one of us is entitled to know how it was conducted. What could be more disheartening than to learn that there exists a tape containing conversations that compromised the integrity of the election process. The doubt will forever hang over our heads, doubting whether those who sit in government are legitimate officials. In matters such as these, leaving the prople in darkness is not an alternative course. People ought to know the truth. Yes, the airing of the *Garci Tapes* may have serious impact, but this is not a valid basis for suppressing it. As Justice Douglas explained in his concurring opinion in the *New York Times,* **"the dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. A debate of large**

proportions goes in the nation over our posture in Vietnam. Open debate and discussion of public issues are vital to our national health."

CARPIO, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; LEGAL STANDING; ANY CONCERNED CITIZEN HAS STANDING TO RAISE AN ISSUE OF TRANSCENDENTAL IMPORTANCE TO THE NATION. — When the issue involves freedom of expression, as in the present case, any citizen has the right to bring suit to question the constitutionality of a government action in violation of freedom of expression, whether or not the government action is directed at such citizen. The government action may chill into silence those to whom the action is directed. Any citizen must be allowed to take up the cudgels for those who have been cowed into inaction because freedom of expression is a vital public right that must be defended by everyone and anyone. Freedom of expression, being fundamental to the preservation of a free, open and democratic society, is of *transcendental importance* that must be defended by every patriotic citizen at the earliest opportunity. We have held that any concerned citizen has standing to raise an issue of *transcendental importance to the nation,* and petitioner in this present petition raises such issue.

2. ID.; ID.; BILL OF RIGHTS; FREEDOM OF EXPRESSION; OVERVIEW. — Freedom of expression is the foundation of a free, open and democratic society. Freedom of expression is an indispensable condition to the exercise of almost all other civil and political rights. No society can remain free, open and democratic without freedom of expression. Freedom of expression guarantees full, spirited, and even contentious discussion of all social, economic and political issues. To survive, a free and democratic society must zealously safeguard freedom of expression. Freedom of expression allows citizens to expose and check abuses of public officials. Freedom of expression allows citizens to make informed choices of candidates for public office. Freedom of expression crystallizes important public policy issues, and allows citizens to participate in the discussion and resolution of such issues. Freedom of expression allows the competition of ideas, the clash of claims and counterclaims, from which the truth will likely emerge.

Freedom of expression allows the airing of social grievances, mitigating sudden eruptions of violence from marginalized groups who otherwise would not be heard by government. Freedom of expression provides a civilized way of engagement among political, ideological, religious or ethnic opponents for if one cannot use his tongue to argue, he might use his fist instead. Freedom of expression is the freedom to disseminate ideas and beliefs, whether competing, conforming or otherwise. It is the freedom to express to others what one likes or dislikes, as it is the freedom of others to express to one and all what they favor or disfavor. It is the free expression for the ideas we love, as well as the free expression for the ideas we hate. Indeed, the function of freedom of expression is to stir disputes: "[I]t may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."

3. ID.; ID.; ID.; ID.; EXPRESSION IS NOT SUBJECT TO ANY PRIOR RESTRAINT OR CENSORSHIP; EXCEPTIONS. — Section 4, Article III of the Constitution prohibits the enactment of any law curtailing freedom of expression: "No law shall be passed abridging the freedom of speech, of expression, or the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." Thus, the rule is that expression is not subject to any ***prior restraint or censorship*** because the Constitution commands that freedom of expression shall not be abridged. Over time, however, courts have carved out narrow and well defined exceptions to this rule out of necessity. The exceptions, ***when expression may be subject to prior restraint***, apply in this jurisdiction to *only* four categories of expression, namely: pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security. **All other expression is not subject to prior restraint**. As stated in *Turner Broadcasting System v. Federal Communication Commission*, "[T]he First Amendment (Free Speech Clause), subject only to narrow and well understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals." Expression not subject to prior restraint is ***protected expression*** or high-value expression. ***Any content-based prior restraint on***

protected expression is unconstitutional without exception. A protected expression means what it says — it is absolutely protected from censorship. Thus, there can be no prior restraint on public debates on the amendment or repeal of existing laws, on the ratification of treaties, on the imposition of new tax measures, or on proposed amendments to the Constitution.

4. ID.; ID.; ID.; ID.; PRIOR RESTRAINTS; CONTENT-BASED RESTRAINT; EXPLAINED. — Prior restraint on expression is content-based if the restraint is aimed at the message or idea of the expression. Courts will subject to strict scrutiny content-based restraint. If the content-based prior restraint is directed at protected expression, courts will strike down the restraint as unconstitutional because there can be no content-based prior restraint on protected expression. The analysis thus turns on whether the prior restraint is content-based, and if so, whether such restraint is directed at protected expression, that is, those not falling under any of the recognized categories of unprotected expression.

5. ID.; ID.; ID.; ID.; ID.; CONTENT-NEUTRAL RESTRAINT; ELUCIDATED. — If the prior restraint is not aimed at the message or idea of the expression, it is content-neutral even if it burdens expression. A content-neutral restraint is a restraint which regulates the time, place or manner of the expression in public places without any restraint on the content of the expression. Courts will subject content-neutral restraints to intermediate scrutiny. An example of a content-neutral restraint is a permit specifying the date, time and route of a rally passing through busy public streets. A content-neutral prior restraint on protected expression which does not touch on the content of the expression enjoys the presumption of validity and is thus enforceable subject to appeal to the courts. Courts will uphold time, place or manner restraints if they are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of expression. In content-neutral prior restraint on protected speech, there should be no prior restraint on the content of the expression itself. Thus, submission of movies or pre-taped television programs to a government review board is constitutional only if the review is for classification and not for censoring any part of the content of the submitted materials. However, failure to submit such materials to the review board may be penalized

without regard to the content of the materials. The review board has no power to reject the airing of the submitted materials. The review board's power is only to classify the materials, whether for general patronage, for adults only, or for some other classification. The power to classify expressions applies only to movies and pre-taped television programs but not to live television programs. Any classification of live television programs necessarily entails prior restraint on expression.

6. ID.; ID.; ID.; ID.; ONLY UNPROTECTED EXPRESSION MAY BE SUBJECT TO PRIOR RESTRAINT. — Expression that may be subject to prior restraint is ***unprotected expression*** or low-value expression. By definition, prior restraint on unprotected expression is content-based since the restraint is imposed because of the content itself. In this jurisdiction, there are currently only four categories of unprotected expression that may be subject to prior restraint. This Court recognized false or misleading advertisement as unprotected expression only in October 2007. ***Only unprotected expression may be subject to prior restraint.*** However, any such prior restraint on unprotected expression must hurdle a high barrier. ***First,*** such prior restraint is presumed unconstitutional. ***Second,*** the government bears a heavy burden of proving the constitutionality of the prior restraint. Courts will subject to strict scrutiny any government action imposing prior restraint on unprotected expression. The government action will be sustained if there is a compelling State interest, and prior restraint is necessary to protect such State interest. In such a case, the prior restraint shall be ***narrowly drawn*** — only to the extent necessary to protect or attain the compelling State interest.

7. ID.; ID.; ID.; ID.; PRIOR RESTRAINT AND SUBSEQUENT PUNISHMENT; APPLICATION. — Prior restraint is a ***more severe*** restriction on freedom of expression than subsequent punishment. Although subsequent punishment also deters expression, still the ideas are disseminated to the public. Prior restraint prevents even the dissemination of ideas to the public. While there can be no prior restraint on protected expression, such expression may be subject to subsequent punishment, either civilly or criminally. Thus, the publication of election surveys cannot be subject to prior restraint, but an aggrieved person can sue for redress of injury if the survey turns out to be fabricated. Also, while Article 201 (2)(b)(3) of the Revised Penal Code

punishing "shows which offend any race or religion" cannot be used to justify prior restraint on religious expression, this provision can be invoked to justify subsequent punishment of the perpetrator of such offensive shows. Similarly, if the unprotected expression does not warrant prior restraint, the same expression may still be subject to subsequent punishment, civilly or criminally. Libel falls under this class of unprotected expression. However, if the expression cannot be subject to the lesser restriction of subsequent punishment, logically it cannot also be subject to the more severe restriction of prior restraint. Thus, since profane language or "hate speech" against a religious minority is not subject to subsequent punishment in this jurisdiction, such expression cannot be subject to prior restraint. If the unprotected expression warrants prior restraint, necessarily the same expression is subject to subsequent punishment. There must be a law punishing criminally the unprotected expression before prior restraint on such expression can be justified. The legislature must punish the unprotected expression because it creates a substantive evil that the State must prevent. Otherwise, there will be no legal basis for imposing a prior restraint on such expression. x x x Prior restraint on protected expression differs significantly from subsequent punishment of protected expression. While there can be no prior restraint on protected expression, there can be subsequent punishment for protected expression under libel, tort or other laws.

8. ID.; ID.; ID.; ID.; PRIOR RESTRAINTS; PRIOR RESTRAINT ON UNPROTECTED EXPRESSION; TEST. — The prevailing test in this jurisdiction to determine the constitutionality of government action imposing prior restraint on three categories of unprotected expression — pornography, advocacy of imminent lawless action, and danger to national security — is the clear and present danger test. The expression restraint must present a clear and present danger of bringing about a substantive evil that the State has a right and duty to prevent, and such danger must be grave and imminent. Prior restraint on unprotected expression takes many forms — it may be a law, administrative regulation, or impermissible pressures like threats of revoking licenses or withholding of benefits. The impermissible pressures need not be embodied in a government agency regulation, but may emanate from policies, advisories or conduct of officials of government agencies.

9. ID.; ID.; ID.; ID.; PUBLIC DISCUSSION ON THE SANCTITY OF THE BALLOT IS A PROTECTED EXPRESSION THAT CANNOT BE SUBJECT TO PRIOR RESTRAINT. — Public discussion on the sanctity of the ballot is indisputably a protected expression that cannot be subject to prior restraint. Public discussion on the credibility of the electoral process is one of the highest political expressions of any electorate, and thus deserves the utmost protection. If ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression, the subject of fair and honest elections would be at the top. In any event, public discussion on all political issues should always remain uninhibited, robust and wide open.

10. ID.; ID.; ID.; ID.; PRIOR RESTRAINTS; ANY ORDER IMPOSING PRIOR RESTRAINT ON UNPROTECTED EXPRESSION REQUIRES PRIOR ADJUDICATION BY THE COURT ON WHETHER THE PRIOR RESTRAINT IS CONSTITUTIONAL. — The NTC has no power to impose content-based prior restraint on expression. The charter of the NTC does not vest NTC with any content-based censorship power over radio and television stations. x x x Any order imposing prior restraint on ***unprotected expression*** requires prior adjudication by the courts on whether the prior restraint is constitutional. This is a necessary consequence from the presumption of invalidity of any prior restraint on unprotected expression. Unless ruled by the courts as a valid prior restraint, government agencies cannot implement outright such prior restraint because restraint is presumed unconstitutional at inception. As an agency that allocates frequencies or airways, the NTC may regulate the bandwidth position, transmitter wattage, and location of radio and television stations, but not the content of the broadcasts. Such content-neutral prior restraint may make operating radio and television stations more costly. However, such content-neutral restraint does not restrict the content of the broadcast.

AZCUNA, *J.*, *separate concurring opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; SECTION 10, ARTICLE XVI OF THE CONSTITUTION; PURPOSE. — Sec. 10, Art. XVI of the Constitution x x x states: "Sec. 10.

The State shall provide the policy environment for the full development of Filipino capability and the emergency of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press." This provision was precisely crafted to meet the needs and opportunities of the emerging new pathways of communications, from radio and tv broadcast to the flow of digital information via cables, satellites and the internet. The purpose of this new statement of directed State policy is to hold the State responsible for a policy environment that provides for (1) the full development of Filipino capability, (2) the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information, and (3) respect for the freedom of speech and of the press. The regulatory warnings involved in this case work against a balanced flow of information in our communication structures and do so without respecting freedom of speech by casting a chilling effect on the media. This is definitely not the policy environment contemplated by the Constitution.

CHICO-NAZARIO, *J.*, *separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; PRIOR RESTRAINT; ABSENT IN CASE AT BAR. — [T]he assailed press statements made by the National Telecommunications Commission (NTC) and the Secretary of Justice Raul Gonzales (Gonzales) do not constitute prior restraint that impair freedom of speech. There being no restraint on free speech, then there is even no need to apply any of the tests, *i.e.*, the dangerous tendency doctrine, the balancing of interests test, and the clear and present danger rule, to determine whether such restraint is valid. The assailed press statements must be understood and interpreted in the proper perspective. The statements must be read in their entirety, and interpreted in the context in which they were made. A scrutiny of the "fair warning" issued by the NTC on 11 June 2005 reveals that it is nothing more than that, a fair warning, calling for sobriety, care, and circumspection in the news reporting and current affairs coverage by radio and television stations. It reminded the owners and operators of the radio

stations and television networks of the provisions in NTC Memorandum Circulars No. 11-12-85 and 22-89, which are also stated in the authorizations and permits granted to them by the government, that they shall not use their stations for the broadcasting or telecasting of false information or willful misrepresentation. It must be emphasized that the NTC is merely reiterating the very same prohibition **already contained** in its previous circulars, and even in the authorizations and permits of radio and television stations. The reason thus escapes me as to why said prohibition, when it was stated in the NTC Memorandum Circulars and in the authorizations and permits, was valid and acceptable, but when it was **reiterated** in a mere **press statement** released by the NTC, had become a violation of the Constitution as a prior restraint on free speech. In the midst of the media frenzy that surrounded the Garci tapes, the NTC, as the administrative body tasked with the regulation of radio and television broadcasting companies, cautioned against the airing of the *unauthenticated* tapes. The warning of the NTC was expressed in the following manner, "[i]f it has been (sic) subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies." According to the foregoing sentence, before any penalty could be imposed on a radio or television company for airing the Garci tapes, the tapes must have been established to be false and fraudulent after prosecution and investigation. The warning is nothing new for it only verbalizes and applies to the particular situation at hand an existing prohibition against spreading false information or willful misrepresentation by broadcast companies. In fact, even without the contested "fair warning" issued by the NTC, broadcast companies could still face penalties if, after investigation and prosecution, the Garci tapes are established to be false and fraudulent, and the airing thereof was done to purposely spread false information or misrepresentation, in violation of the prohibition stated in the companies' authorizations and permits, as well as the pertinent NTC Memorandum Circulars. Moreover, we should not lose sight of the fact that just three days after its issuance of its "fair

warning," or on 14 June 2005, the NTC again released another press statement, this time, jointly made with the *Kapisanan ng Broadcasters sa Pilipinas* (KBP). x x x Neither should we give much merit to the statements made by Secretary Gonzales to the media that he had already instructed the National Bureau of Investigation (NBI) to monitor all radio stations and television networks for possible violations of the Anti-Wiretapping Law. Secretary Gonzales is one of media's favorite political personalities, hounded by reporters, and featured almost daily in newspapers, radios, and televisions, for his "quotable quotes," some of which appeared to have been uttered spontaneously and flippantly. There was no showing that Secretary Gonzales had actually and officially ordered the NBI to conduct said monitoring of radio and television broadcasts, and that the NBI acted in accordance with said order.

2. ID.; ID.; ID.; ID.; PRESS STATEMENTS; NATURE. — We should be judicious in giving too much weight and credence to press statements. I believe that it would be a dangerous precedent to rule that press statements should be deemed an official act of the administrative agency or public official concerned. Press statements, in general, can be easily manufactured, prone to alteration or misinterpretation as they are being reported by the media, and may, during some instances, have to be made on the spot without giving the source much time to discern the ramifications of his statements. Hence, they cannot be given the same weight and binding effect of official acts in the form of, say, memorandum orders or circulars. Even if we assume *arguendo* that the press statements are official issuances of the NTC and Secretary Gonzales, then the petitioner alleging their unconstitutionality must bear the burden of proving first that the challenged press statements did indeed constitute prior restraint, before the presumption of invalidity of any system of prior restraint on free speech could arise. Until and unless the petitioner satisfactorily discharges the said burden of proof, then the press statements must similarly enjoy the presumption of validity and constitutionality accorded to statutes, having been issued by officials of the executive branch, a co-equal. The NTC and Secretary Gonzales must likewise be accorded the presumption that they issued the questioned press statements in the regular performance of their duties as the regulatory body for the broadcasting industry and the head of the principal law agency of the government, respectively.

VELASCO, JR., ***J., concurring and dissenting opinions*****:**

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH AND OF THE PRESS; PRIOR RESTRAINT; THE PRESS RELEASE ISSUED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION IN CASE AT BAR CONSTITUTES A CONTENT-BASED PRIOR RESTRAINT. — [T]he warning issued by the NTC, by way of a press release, that the continuous airing or broadcast of the "Garci Tapes" is a violation of the Anti-Wiretaping Law, restricts the freedom of speech and of the press and constitutes a content-based prior resrtraint impermissible under the Constitution. The quality of impermissibility comes in owing to the convergence and combined effects of the following postulates, to wit: the warning was issued at the time when the "Garci Tapes" was newspaper headline and radio/TV primetime material; it was given by the agency empowered to issue, suspend, or altogether cancel the certificate of authority of owners or operators of radio or broadcast media; the chilling effect the warning has on media owners, operators, or practitioners; and facts are obtaining casting doubt on the proposition that airing the controversial tape would violate the anti-wiretapping law. x x x [T]he prior restraining warning need not be embodied in a formal order or circular, it being sufficient that such warning was made by a government agency, NTC in this case, in the performance of its official duties. Press releases on a certain subject can rightfully be treated as statements of official position or policy, as the case may be, on such subject. x x x [T]he facts on record are sufficient to support a conclusion that the press release issued by NTC — with all the unmistakable threat embodied in it of a possible cancellation of licenses and/or the filing of criminal cases against erring media owners and practitioners-constitutes a clear instance of prior restraint. Not lost on this writer is the fact that five (5) days after it made the press release in question, NTC proceeded to issue jointly with the Kapisanan ng mga Broadcasters sa Pilipinas (KBP) another press release to clarify that the earlier one issued was not intended to limit or restrain press freedom. With the view I take of the situation, the very fact that the KBP agreed to come up with the joint press statement that "NTC did not issue any [Memorandum Circular] or order constituting a restraint of press freedom or censorship" tends to prove, rather

than disprove, the threatening and chilling tone of its June 11, 2005 press release. If there was no prior restraint from the point of view of media, why was there a need to hold a dialogue with KBP and then issue a clarifying joint statement? Moreover, the fact that media owners, operators and practitioners appeared to have been frozen into inaction, not making any visible effort to challenge the validity of the NTC press statement, or at least join the petitioner in his battle for press freedom, can only lead to the conclusion that the chilling effect of the statement left them threatened. x x x The NTC "warning" is in reality a threat to TV and radio station owners and operators not to air or broadcast the "Garci Tapes" in any of their programs. The four corners of the NTC's press statement unequivocally reveal that the "Garci Tapes" may not be authentic as they have yet to be duly authenticated. It is a statement of fact upon which the regulatory body predicated its warning that its airing or broadcast will constitute false or misleading dissemination of information that could result in the suspension or cancellation of their respective licenses or franchises. The press statement was more than a mere notice of a possible suspension. Its crafting and thrust made it more of a threat — a declaration by the regulatory body that the operators or owners should not air or broadcast the tapes. Otherwise, the menancing portion on suspension or cancellation of their franchises to operate TV/radio station will be implemented. Indeed, the very press statement speaks eloquently on the chilling effect on media. One has to consider likewise the fact that the warning was not made in an official NTC circular but in a press statement. The press statement was calculated to immediately inform the affected sectors, unlike the warning done in a circular, which may not reach the intended recipients as fast.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; DEPARTMENT OF JUSTICE; THE SECRETARY IS IMPLIEDLY EMPOWERED TO ISSUE REMINDERS AND WARNINGS AGAINST VIOLATIONS OF PENAL STATUTES; CASE AT BAR. — While the Court has several pieces of evidence to fall back on and judiciously resolve the NTC press release issue, the situation is different with respect to the Department of Justice (DOJ) warning issue. What is at hand are mere allegations in the petition that, on June 8, 2005, respondent DOJ Secretary Raul Gonzales warned reporters in possession of copies of the compact disc containing the alleged

"Garci" wiretapped conversation and those broadcasting or publishing its contents that they could be held liable under the Anti-Wiretaping Act, adding that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge of the crime committed or in whose presence the crime was being committed. There was no proof at all of the possible chilling effect that the alleged statements of DOJ Secretary Gonzales had on the reporters and media practitioners. The DOJ Secretary, as head of the prosecution arm of the government and lead administrator of the criminal justice system under the Administrative Code is, to be sure, impliedly empowered to issue reminders and warnings against violations of penal statutes. And it is a known fact that Secretary Gonzales had issued, and still issues, such kind of warnings. Whether or not he exceeded his mandate under premises is unclear. It is for this main reason that x x x the prior-restraint issue in the DOJ aspect of the case [is] not yet ripe for adjudication.

TINGA, *J., separate opinion (dissenting and concurring)*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION; CONTENT-BASED REGULATION; EXPLAINED. — The infringement on the right [of free expression] by the State can take the mode of content-based regulation or a content-neutral regulation. With respect to content-based regulations, the only expressions that may be proscribed or punished are the traditionally recognized unprotected expressions — those that are obscene, pose danger to national security or incite imminent lawless action, or are defamatory. In order that such unprotected expressions may be restrained, it must be demonstrated that they pose a clear and present danger of bringing about a substantive evil that the State has a right and duty to prevent, such danger being grave and imminent as well. But as to all other protected expressions, there can be no content-based regulation at all. No prior restraint, no subsequent punishment. For as long as the expression is not libelous or slanderous, not obscene, or otherwise not dangerous to the immediate well-being of the State and of any other's, it is guaranteed protection by the Constitution. [I]t [is not] material whether the protected expression is of a political, religious, personal, humorous or

trivial nature — they all find equal comfort in the Constitution. Neither should it matter through what medium the expression is conveyed, whether through the print or broadcast media, through the Internet or through interpretative dance. For as long as it does not fall under the above-mentioned exceptions, it is accorded the same degree of protection by the Constitution.

2. ID.; ID.; ID.; ID.; PRIOR RESTRAINT; THE PRESS RELEASE ISSUED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION IN CASE AT BAR DOES NOT OPERATE AS A PRIOR RESTRAINT. — As a means of nullifying the Press Release, the document has been characterized as a form of prior restraint which is generally impermissible under the free expression clause. The concept of prior restraint is traceable to as far back as the Blackstone's Commentaries from the 18th century. Its application is integral to the development of the modern democracy. "In the first place, the main purpose of such constitutional provisions is 'to prevent all such previous restraints upon publications as had been practiced by other governments,' and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare." In *Nebraska Press Association v. Stuart*, the United States Supreme Court noted that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Yet prior restraint "by contrast and by definition, has an immediate and irreversible sanction." The assailed act of the NTC, contained in what is after all an unenforceable Press Release, hardly constitutes, "an immediate and irreversible sanction." In fact, as earlier noted, the Press Release does not say that it would immediately sanction a broadcast station which air the *Garci* Tapes. What it does say is that only "if it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation" that the stations could be subjected to possible suspension. It is evident that the issuance does not prohibit the airing of the *Garci* tapes or require that the broadcast stations obtain permission from the government or the NTC to air such tapes. x x x The warning embodies in the Press Release is neither a legally enforceable vehicle to impose sanction nor a legally binding condition precedent that presages the actual sanction. However one may react to the Press Release or the perceived intent behind it, the issuance still does not constitute "an immediate and irreversible sanction."

3. ID.; ID.; ID.; ID.; CONCEPTS OF PRIOR RESTRAINT AND CHILLING EFFECT; DISTINGUISHED. — There are a few similarities between the concepts x x x [of "prior restraint" and "chilling effect"] especially that both come into operation before the actual speech or expression finds light. At the same time, there are significant differences. A government act that has a chilling effect on the exercise of free expression is an infringement within the constitutional purview. As the liberal lion Justice William Brennan announced, in *NAACP v. Button,* **"the threat of restraint, as opposed to actual restraint itself, may deter the exercise of the right to free expression almost as potently as the actual application of sanctions."** Such threat of restraint is perhaps a more insidious, if not sophisticated, means for the State to trample on free speech. Protected expression is chilled simply by speaking softly while carrying a big stick. In distinguishing chilling effect from prior restraint, *Nebraska Press Association,* citing Bickel, observed, "[i]f it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint "freezes" it at least for the time." An act of government that chills expression is subject to nullification or injunction from the courts, as it violates Section 3, Article III of the Constitution. "Because government retaliation tends to chill an individual's exercise of his right to free expression, public officials may not, as a general rule, respond to an individual's protected activity with conduct or speech even though that conduct or speech would otherwise be a lawfull exercise of public authority.

4. ID.; ID.; ID.; ID.; CHILLING EFFECT ON FREE SPEECH; PROOF THEREOF, REQUIRED. — In a case decided just last year by a U.S. District Court in Georgia, x x x [a] summary was provided on the evidentiary requirement in claims of a chilling effect in the exercise of First Amendment rights such as free speech and association. x x x It makes utter sense to impose even a minimal evidentiary requirement before the Court can conclude that a particular government action has had a chilling effect on free speech. Without an evidentiary standard, judges will be forced to rely on intuition and even personal or political sentiments as the basis for determining whether or not a chilling effect is present. That is a highly dangerous precedent, and one that clearly has not been accepted in the United States. In fact, in *Zieper v. Metzinger,* the U.S. District Court of New York found it relevant, in ruling against

the petitioner, that Zieper "has stated affirmatively that his speech was not chilled in any way." "Where a party can show no change in his behavior, he has quite plainly shown no chilling of his First Amendment right to free speech."

5. ID.; ID.; ID.; ID.; ACTUAL INFRINGEMENT THEREOF, COMMITTED BY THE SECRETARY OF JUSTICE IN CASE AT BAR. — The particular acts complained of the DOJ Secretary are explained in detail in the petition, narrated in the decision, and corroborated by contemporary news accounts published at that time. The threats are directed at anybody in possession of, or intending to broadcast or disseminate, the tapes. Unlike the NTC, the DOJ Secretary has the actual capability to infringe the right to free expression of even the petitioner, or of anybody for that matter, since his office is empowered to initiate criminal prosecutions. Thus, petitioner's averments in his petition and other submissions comprise the evidence of the DOJ Secretary's infringement of the freedom of speech and expression. Was there an actual infringement of the right to free expression committed by the DOJ Secretary? If so, how was such accomplished? Quite clearly, the DOJ Secretary did infringe on the right to free expression by employing "the threat of restraint," thus embodying "government retaliation [that] tends to chill an individual's exercise of his right to free expression." The DOJ Secretary plainly and directly threatened anyone in possession of the Garci tapes, or anyone who aired or disseminated the same, with the extreme sanction of criminal prosecution and possible imprisonment. He reiterated the threats as he directed the NBI to investigate the airing of the tapes. He even extended the warning of sanction to the Executive Press Secretary. These threats were evidently designed to stop the airing or dissemination of the *Garci* tapes — a protected expression which cannot be enjoined by executive fiat. x x x Yet the fact that the DOJ Secretary has yet to make operational his threats does not dissuade from the conclusion that the threats alone already chilled the atmosphere of free speech or expression.

NACHURA, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; LEGAL STANDING; TEST. — Petitioner has

standing to file the instant petition. The test is whether the party has 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. When suing as a citizen, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. When the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.

2. ID.; ID.; ID.; ACTUAL CONTROVERSY; THE POWER OF JUDICIAL INQUIRY IS LIMITED TO THE DETERMINATION OF ACTUAL CASES AND CONTROVERSIES. — The exercise by this Court of the power of judicial inquiry is limited to the determination of actual cases and controversies. An actual case or controversy means an existing conflict that is appropriate or ripe for judicial determination, one that is not conjectural or anticipatory, otherwise the decision of the court will amount to an advisory opinion. The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Neither will the Court determine a moot question in a case in which no practical relief can be granted. Indeed, it is unnecessary to indulge in academic discussion of a case presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced. x x x A case becomes moot when its purpose has become stale. Be that as it may, the Court should discuss and resolve the fundamental issues raised herein, in observance of the rule that courts shall decide a question otherwise moot and academic if it is capable of repetition yet evasive of review.

3. ID.; ID.; BILL OF RIGHTS; FREEDOM OF EXPRESSION; NATURE. — [F]reedom of expression enjoys an exalted place in the hierarchy of constitutional rights. But it is also a settled principle, growing out of the nature of well-ordered civil societies that the exercise of the right is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, not injurious to the rights of the

community or society. Consistent with this principle, the exercise of the freedom may be the subject of reasonable government regulation. The broadcast media are no exception.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; NATIONAL TELECOMMUNICATIONS COMMISSION; POWERS. — [I]n *Federal Communications Commission (FCC) v. League of Women Voters in America*, it was held that — "(W)e have long recognized that Congress, acting pursuant to the Commerce Clause, has power to regulate the use of this scarce and valuable national resource. The distinctive feature of Congress' efforts in this area has been to ensure through the regulatory oversight of the FCC that only those who satisfy the "public interest, convenience and necessity" are granted a license to use radio and television broadcast frequencies." In the Philippines, it is the respondent NTC that has regulatory powers over telecommunications networks. In Republic Act No. 7925, the NTC is denominated as its principal administrator, and as such shall take the necessary measures to implement the policies and objectives set forth in the Act. Under Executive Order 546, the NTC is mandated, among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities. The NTC exercises quasi-judicial powers. The issuance of the press release by NTC was well within the scope of its regulatory and supervision functions, part of which is to ensure that the radio and television stations comply with the law and the terms of their respective authority. Thus, it was not improper for the NTC to warn the broadcast media that the airing of taped materials, if subsequently shown to be false, would be a violation of law and of the terms of their certificate of authority, and could lead, after appropriate investigation, to the cancellation or revocation of their license.

5. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION; FREEDOM FROM PRIOR RESTRAINT AND FREEDOM FROM SUBSEQUENT PUNISHMENT; EXPLAINED. — Courts have traditionally recognized two cognate and complementary facets of freedom of expression, namely: freedom from censorship or prior restraint and freedom

from subsequent punishment. The first guarantees untrammeled right to expression, free from legislative, administrative or judicial orders which would effectively bar speech or publication even before it is made. The second prohibits the imposition of any sanction or penalty for the speech or publication after its occurrence. Freedom from prior restraint has enjoyed the widest spectrum of protection, but no real constitutional challenge has been raised against the validity of laws that punish abuse of the freedom, such as the laws on libel, sedition or obscenity. "Prior restraint" is generally understood as an imposition in advance of a limit upon speech or other forms of expression. In determining whether a restriction is a prior restraint, one of the key factors considered is whether the restraint prevents the expression of a message. In *Nebraska Press Association v. Stuart,* the U.S. Supreme Court declared: "A prior restraint . . . by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time." As an aspect of freedom of expression, prior restraint should not be confused with subsequent punishment. x x x [T]here is prior restraint when the government act forbids speech, prohibits the expression of a message, or imposes onerous requirements or restrictions for the publication or dissemination of ideas. In theses cases, we did not hesitate to strike down the administrative or judicial order for violating the free expression clause in the Constitution.

6. ID.; ID.; ID.; ID.; PRIOR RESTRAINT; ABSENT IN CASE AT BAR. — [I]n the instant case, the issuance of the press release was simply part of the duties of the NTC in the enforcement and administration of the laws which it is tasked to implement. The press release did not actually or directly prevent the expression of a message. The respondents never issued instructions prohibiting or stopping the publication of the alleged wiretapped conversation. The warning or advisory in question did not constitute suppression, and the possible *in terrorem* effect, if any, is not prior restraint. It is not prior restraint because, if at all, the feared license revocation and criminal prosecution come after the publication, not before it, and only after a determination by the proper authorities that there was, indeed, a violation of law. **The press release does not have a "chilling effect" because even without the press release, existing laws — and rules and regulations —**

authorize the revocation of licenses of broadcast stations if they are found to have violated penal laws or the terms of their authority. x x x [T]he press statements are not a prerequisite to prosecution, neither does the petition demonstrate that prosecution is any more likely because of them. If the prosecutorial arm of the Government and the NTC deem a media entity's act to be violative of our penal laws or the rules and regulations governing broadcaster's licenses, they are free to prosecute or to revoke the licenses of the erring entities **with or without the challenged press releases**. The petitioner likewise makes capital of the alleged prior determination and conclusion made by the respondents that the continuous airing of the tapes is a violation of the Anti-Wiretapping Law and of the conditions of the authority granted to the broadcast stations. x x x Only when it has been sufficiently established, after a prosecution or appropriate investigation, that the tapes are false or fraudulent may there be a cancellation or revocation of the station's license. There is no gainsaying that the airing of false information or willful misrepresentation constitutes a valid ground for revocation of the license, and so is violation of the Anti-Wiretapping Law which is a criminal offense. But that such revocation of license can only be effected after an appropriate investigation clearly shows that there are adequate safeguards available to the radio and television stations, and that there will be compliance with the due process clause. x x x Finally, we believe that the "clear and present danger rule" — the universally-accepted norm for testing the validity of governmental intervention in free speech — finds no application in this case precisely because there is no prior restraint.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED. — Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

D E C I S I O N

PUNO, *C.J.*:

A. Precis

In this jurisdiction, it is established that freedom of the press is crucial and so inextricably woven into the right to free speech and free expression, that any attempt to restrict it must be met with an examination so critical that only a danger that is clear and present would be allowed to curtail it.

Indeed, we have not wavered in the duty to uphold this cherished freedom. We have struck down laws and issuances meant to curtail this right, as in *Adiong v. COMELEC*,[1] *Burgos v. Chief of Staff*,[2] *Social Weather Stations v. COMELEC*,[3] and *Bayan v. Executive Secretary Ermita*.[4] When on its face, it is clear that a governmental act is nothing more than a naked means to prevent the free exercise of speech, it must be nullified.

B. The Facts

1. The case originates from events that occurred a year after the 2004 national and local elections. On June 5, 2005, Press Secretary Ignacio Bunye told reporters that the opposition was planning to destabilize the administration by releasing an audiotape of a mobile phone conversation allegedly between the President of the Philippines, Gloria Macapagal Arroyo, and a high-ranking official of the Commission on Elections (COMELEC). The conversation was audiotaped allegedly through wire-tapping.[5] Later, in a *Malacañang* press briefing, Secretary Bunye produced two versions of the

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[1] G.R. No. 103956, March 31, 1992, 207 SCRA 712.

[2] 218 Phil. 754 (1984).

[3] G.R. No. 147571, May 5, 2001, 357 SCRA 496.

[4] G.R. No. 169838, April 25, 2006, 488 SCRA 226.

[5] *Rollo*, pp. 6-7 (citing the Philippine Daily Inquirer [PDI], June 7, 2005, pp. A1, A18; PDI, June 14, 2005, p. A1); and p. 58.

tape, one supposedly the complete version, and the other, a spliced, "doctored" or altered version, which would suggest that the President had instructed the COMELEC official to manipulate the election results in the President's favor.[6] It seems that Secretary Bunye admitted that the voice was that of President Arroyo, but subsequently made a retraction.[7]

2. On June 7, 2005, former counsel of deposed President Joseph Estrada, Atty. Alan Paguia, subsequently released an alleged authentic tape recording of the wiretap. Included in the tapes were purported conversations of the President, the First Gentleman Jose Miguel Arroyo, COMELEC Commissioner Garcillano, and the late Senator Barbers.[8]

3. On June 8, 2005, respondent Department of Justice (DOJ) Secretary Raul Gonzales warned reporters that those who had copies of the compact disc (CD) and those broadcasting or publishing its contents could be held liable under the Anti-Wiretapping Act. These persons included Secretary Bunye and Atty. Paguia. He also stated that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge if the crime was committed or was being committed in their presence.[9]

4. On June 9, 2005, in another press briefing, Secretary Gonzales ordered the National Bureau of Investigation (NBI) to go after media organizations "*found to have caused the spread, the playing and the printing of the contents of a tape*" of an alleged wiretapped conversation involving the President about fixing votes in the 2004 national elections. Gonzales said that he was going to start with **Inq7.net**, a joint venture between the **Philippine**

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[6] *Id*. at 7-8 (citing the Manila Standard, June 10, 2005, p. A2); and 58.

[7] *Id*. at 7-8 and 59.

[8] *Id*.

[9] *Id*. at 8-9 and 59.

Daily Inquirer and GMA7 television network, because by the very nature of the Internet medium, it was able to disseminate the contents of the tape more widely. He then expressed his intention of inviting the editors and managers of Inq7.net and GMA7 to a probe, and supposedly declared, "I [have] asked the NBI to conduct a tactical interrogation of all concerned."[10]

5. On June 11, 2005, the NTC issued this press release:[11]

> NTC GIVES FAIR WARNING TO RADIO AND TELEVISION OWNERS/OPERATORS TO OBSERVE ANTI-WIRETAPPING LAW AND PERTINENT CIRCULARS ON PROGRAM STANDARDS
>
> x x x x x x x x x
>
> Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC **warns** all radio stations and television network owners/operators that the conditions of the authorization and permits issued to them by Government like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use [their] stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the [NTC] that certain personalities are in possession of alleged taped conversations which they claim involve the President of the Philippines and a Commissioner of the COMELEC regarding supposed violation of election laws.
>
> These personalities have admitted that the taped conversations are products of illegal wiretapping operations.
>
> Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, it is the position of the [NTC] that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions

[10] *Id*. at 9.

[11] *Id*. at 10-12, 43-44, 60-62.

of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations. It has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby **warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.**

In addition to the above, the [NTC] reiterates the pertinent NTC circulars on program standards to be observed by radio and television stations. NTC Memorandum Circular 111-12-85 explicitly states, among others, that "all radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matters being broadcast or telecast the tendency thereof is to disseminate false information or such other willful misrepresentation, or to propose and/or incite treason, rebellion or sedition." The foregoing directive had been reiterated by NTC Memorandum Circular No. 22-89, which, in addition thereto, prohibited radio, broadcasting and television stations from using their stations to broadcast or telecast any speech, language or scene disseminating false information or willful misrepresentation, or inciting, encouraging or assisting in subversive or treasonable acts.

The [NTC] will not hesitate, after observing the requirements of due process, to apply with full force the provisions of said Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.

6. On June 14, 2005, NTC held a **dialogue** with the Board of Directors of the *Kapisanan ng mga Brodkaster sa Pilipinas (KBP)*. NTC allegedly assured the KBP that the press release did not violate the constitutional freedom of speech, of expression, and of the press, and the right to information. Accordingly, NTC and KBP issued a **Joint Press Statement** which states, among others, that:[12]

[12] *Id*. at 62-63, 86-87.

- NTC respects and will not hinder freedom of the press and the right to information on matters of public concern. KBP & its members have always been committed to the exercise of press freedom with high sense of responsibility and discerning judgment of fairness and honesty.
- NTC did not issue any MC [Memorandum Circular] or Order constituting a restraint of press freedom or censorship. The NTC further denies and does not intend to limit or restrict the interview of members of the opposition or free expression of views.
- What is being asked by NTC is that the exercise of press freedom [be] done responsibly.
- KBP has program standards that KBP members will observe in the treatment of news and public affairs programs. These include verification of sources, non-airing of materials that would constitute inciting to sedition and/or rebellion.
- The KBP Codes also require that no false statement or willful misrepresentation is made in the treatment of news or commentaries.
- The supposed wiretapped tapes should be treated with sensitivity and handled responsibly giving due consideration to the process being undertaken to verify and validate the authenticity and actual content of the same."

C. The Petition

Petitioner Chavez filed a petition under Rule 65 of the Rules of Court against respondents Secretary Gonzales and the NTC, "praying for the issuance of the writs of *certiorari* and prohibition, as extraordinary legal remedies, to annul void proceedings, and to prevent the unlawful, unconstitutional and oppressive exercise of authority by the respondents."[13]

Alleging that the acts of respondents are violations of the freedom on expression and of the press, and the right of the

[13] *Id*. at 6.

people to information on matters of public concern,[14] petitioner specifically asked this Court:

> [F]or [the] nullification of acts, issuances, and orders of respondents committed or made since June 6, 2005 until the present that curtail the public's rights to freedom of expression and of the press, and to information on matters of public concern specifically in relation to information regarding the controversial taped conversion of President Arroyo and for prohibition of the further commission of such acts, and making of such issuances, and orders by respondents.[15]

Respondents[16] denied that the acts transgress the Constitution, and questioned petitioner's legal standing to file the petition. Among the arguments they raised as to the validity of the "fair warning" issued by respondent NTC, is that broadcast media enjoy lesser constitutional guarantees compared to print media, and the warning was issued pursuant to the NTC's mandate to regulate the telecommunications industry.[17] It was also stressed that "most of the [television] and radio stations continue, even to this date, to air the tapes, but of late within the parameters agreed upon between the NTC and KBP."[18]

D. THE PROCEDURAL THRESHOLD: LEGAL STANDING

To be sure, the circumstances of this case make the constitutional challenge peculiar. Petitioner, who is not a member of the broadcast media, prays that we strike down the acts and statements made by respondents as violations of the right to free speech, free expression and a free press. For another, the

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[14] Respondents have "committed blatant violations of the freedom of expression and of the press and the right of the people to information on matters of public concern enshrined in Article III, Sections 4 and 7 of the 1987 Constitution. *Id.* at 18. Petitioner also argued that respondent NTC acted beyond its powers when it issued the press release of June 11, 2005. *Id.*

[15] *Id.* at 6.

[16] Through the Comment filed by the Solicitor-General. *Id.* at 56-83.

[17] *Id.* at 71-73.

[18] *Id.* at 74-75.

recipients of the press statements have not come forward — neither intervening nor joining petitioner in this action. Indeed, as a group, they issued a joint statement with respondent NTC that does not complain about restraints on freedom of the press.

It would seem, then, that petitioner has not met the requisite legal standing, having failed to allege "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."[19]

But as early as half a century ago, we have already held that where serious constitutional questions are involved, "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside if we must, technicalities of procedure."[20] Subsequently, this Court has repeatedly and consistently refused to wield procedural barriers as impediments to its addressing and resolving serious legal questions that greatly impact on public interest,[21] in keeping with the Court's duty under the 1987 Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them.

Thus, in line with the liberal policy of this Court on *locus standi* when a case involves an issue of overarching significance to

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[19] The Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal 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 government 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. *Pimentel v. Executive Secretary,* G.R. No. 158088, July 6, 2005, 462 SCRA 622, citing *Joya vs. Presidential Commission on Good Government,* G.R. No. 96541, August 24, 1993, 225 SCRA 568. See *Kilosbayan, Inc. v. Morato,* G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563; and *Agan v. PIATCO* (Decision), 450 Phil. 744 (2003).

[20] *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949), cited in *Osmeña v. COMELEC*, G.R. No. 100318, July 30, 1991, 199 SCRA 750.

[21] See *Agan v. PIATCO* (Decision), 450 Phil. 744 (2003).

our society,[22] we therefore brush aside technicalities of procedure and take cognizance of this petition,[23] seeing as it involves a challenge to the most exalted of all the civil rights, the freedom of expression. **The petition raises other issues like the extent of the right to information of the public. It is fundamental, however, that we need not address all issues but only the most decisive one which in the case at bar is whether the acts of the respondents abridge freedom of speech and of the press**.

But aside from the primordial issue of determining whether free speech and freedom of the press have been infringed, the case at bar also gives this Court the opportunity: (1) to distill the essence of freedom of speech and of the press now beclouded by the vagaries of motherhood statements; (2) to clarify the types of speeches and their differing restraints allowed by law; (3) to discuss the core concepts of prior restraint, content-neutral and content-based regulations and their constitutional standard of review; (4) to examine the historical difference in the treatment of restraints between print and broadcast media and stress the standard of review governing both; and (5) to call attention to the ongoing blurring of the lines of distinction between print and broadcast media.

E. RE-EXAMINING THE LAW ON FREEDOM OF SPEECH, OF EXPRESSION AND OF THE PRESS

> *No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.*[24]

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[22] *Philconsa v. Jimenez*, 122 Phil. 894 (1965); *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317; *Guingona v. Carague*, G.R. No. 94571, April 22, 1991, 196 SCRA 221; *Osmeña v. COMELEC*, G.R. No. 100318, July 30, 1991, 199 SCRA 750; *Basco v. PAGCOR*, 274 Phil. 323 (1991); *Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290; *Del Mar v. PAGCOR*, 400 Phil. 307 (2000).

[23] *Basco v. PAGCOR*, 274 Phil. 323 (1991), citing *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, G.R. No. 81311, June 30, 1988, 163 SCRA 371.

[24] 1987 PHIL. CONST. Art. III, §4.

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. The cognate rights codified by Article III, Section 4 of the Constitution, copied almost verbatim from the First Amendment of the U.S. Bill of Rights,[25] were considered the necessary consequence of republican institutions and the complement of free speech.[26] This preferred status of free speech has also been codified at the international level, its recognition now enshrined in international law as a customary norm that binds all nations.[27]

In the Philippines, the primacy and high esteem accorded freedom of expression is a fundamental postulate of our constitutional system.[28] This right was elevated to constitutional status in the 1935, the 1973 and the 1987 Constitutions, reflecting our own

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[25] U.S. Bill of Rights, First Amendment. ("Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.")

[26] The First Amendment was so crafted because the founders of the American government believed — as a matter of history and experience — that the freedom to express personal opinions was essential to a free government. *See* LARRY KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTION AND JUDICIAL REVIEW* (2004).

[27] Article 19 of the 1948 Universal Declaration on Human Rights (UDHR) states: "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Although the UDHR is not binding as a treaty, many of its provisions have acquired binding status on States and are now part of customary international law. Article 19 forms part of the UDHR principles that have been transformed into binding norms. Moreover, many of the rights in the UDHR were included in and elaborated on in the International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by over 150 States, including the Philippines. The recognition of freedom of expression is also found in regional human rights instruments, namely, the European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 10), and the African Charter on Human and Peoples' Rights (Article 9).

[28] *Gonzales v. COMELEC,* 137 Phil. 471, 492 (1969).

lesson of history, both political and legal, that freedom of speech is an indispensable condition for nearly every other form of freedom.[29] Moreover, our history shows that the struggle to protect the freedom of speech, expression and the press was, at bottom, the struggle for the indispensable preconditions for the exercise of other freedoms.[30] For it is only when the people have unbridled access to information and the press that they will be capable of rendering enlightened judgments. In the oft-quoted words of Thomas Jefferson, we cannot both be free and ignorant.

E.1. ABSTRACTION OF FREE SPEECH

Surrounding the freedom of speech clause are various concepts that we have adopted as part and parcel of our own Bill of Rights provision on this basic freedom.[31] What is embraced under this provision was discussed exhaustively by the Court in *Gonzales v. Commission on Elections*,[32] in which it was held:

> . . . At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages,

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[29] *Salonga v. Cruz-Pano*, G.R. 59524, February 18, 1985, 134 SCRA 458-459; *Gonzales v. COMELEC*, 137 Phil. 489, 492-3 (1969); *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 676-677 (1973); *National Press Club v. COMELEC*, G.R. No. 102653, March 5, 1992, 207 SCRA 1, 9; *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 715.

[30] Indeed, the struggle that attended the recognition of the value of free expression was discussed by Justice Malcolm in the early case *United States v. Bustos*, 37 Phil. 731, 739 (1918). Justice Malcolm generalized that the freedom of speech as cherished in democratic countries was unknown in the Philippine Islands before 1900. Despite the presence of pamphlets and books early in the history of the Philippine Islands, the freedom of speech was alien to those who were used to obeying the words of *barangay* lords and, ultimately, the colonial monarchy. But ours was a history of struggle for that specific right: to be able to express ourselves especially in the governance of this country. *Id.*

[31] *Id*.

[32] 137 Phil. 471, 492 (1969).

or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.[33]

Gonzales further explained that the vital need of a constitutional democracy for freedom of expression is undeniable, whether as a means of assuring individual self-fulfillment; of attaining the truth; of assuring participation by the people in social, including political, decision-making; and of maintaining the balance between stability and change.[34] As early as the 1920s, the trend as reflected in Philippine and American decisions was to recognize the broadest scope and assure the widest latitude for this constitutional guarantee. The trend represents a profound commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open.[35]

Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence.[36] When atrophied, the right becomes meaningless.[37] The right belongs as well — if not more — to those who question, who do not conform, who differ.[38] The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."[39] To

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[33] *Id*.

[34] *Id.* at 493, citing Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 Yale Law Journal 877 (1963).

[35] *Id.* citing *New York Times Co. v. Sullivan*, 376 US 254, 270 (1964).

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id.* citing *Terminiello v. City of Chicago*, 337 US 1, 4 (1949).

paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.[40]

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.

The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative. Specifically, in *Eastern Broadcasting Corporation (DYRE) v. Dans*,[41] this Court stated that all forms of media, whether print or broadcast, are entitled to the broad protection of the clause on freedom of speech and of expression.

While all forms of communication are entitled to the broad protection of freedom of expression clause, **the freedom of film, television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspapers and other print media, as will be subsequently discussed.**

E.2. DIFFERENTIATION: THE LIMITS & RESTRAINTS OF FREE SPEECH

From the language of the specific constitutional provision, it would appear that the right to free speech and a free press is not susceptible of any limitation. But the realities of life in a complex society preclude a literal interpretation of the provision

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[40] *Id*. citing *U.S. v. Schwimmer*, 279 US 644, 655 (1929).

[41] G.R. No. 59329, July 19, 1985, 137 SCRA 628.

prohibiting the passage of a law that would abridge such freedom. For freedom of expression is not an absolute,[42] nor is it an "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

Thus, all speech are not treated the same. Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society.[43] The difference in treatment is expected because the relevant interests of one type of speech, *e.g.*, political speech, may vary from those of another, *e.g.*, obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech.[44] We have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized.[45]

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[42] *Gonzales v. COMELEC*, 137 Phil. 471, 494 (1969).

[43] HECTOR S. DE LEON, I *PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES* 485 (2003) [Hereinafter DE LEON, *CONSTITUTIONAL LAW*]).

[44] See JOHN E. NOWAK & RONALD D. ROTUNDA, *CONSTITUTIONAL LAW* §16.1, 1131 (7th ed.2000 [Hereinafter NOWAK & ROTUNDA, *CONSTITUTIONAL LAW*].

[45] DE LEON, *CONSTITUTIONAL LAW* at 485. Laws have also limited the freedom of speech and of the press, or otherwise affected the media and freedom of expression. The Constitution itself imposes certain limits (such as Article IX on the Commission on Elections, and Article XVI prohibiting foreign media ownership); as do the Revised Penal Code (with provisions on national security, libel and obscenity), the Civil Code (which contains two articles on privacy), the Rules of Court (on the fair administration of justice and contempt) and certain presidential decrees. There is also a "shield law," or Republic Act No. 53, as amended by Republic Act No. 1477. Section 1 of this law provides protection for non-disclosure of sources of information, without prejudice to one's liability under civil and criminal laws. The publisher, editor, columnist or duly accredited reporter of a newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any information or news report appearing in said publication, if the information was released in confidence to such publisher, editor or reporter unless the court or a Committee of Congress finds that such revelation is demanded by the security of the state.

Moreover, the techniques of reviewing alleged restrictions on speech (overbreadth, vagueness, and so on) have been applied differently to each category, either consciously or unconsciously.[46] A study of free speech jurisprudence — whether here or abroad — will reveal that courts have developed different tests as to specific types or categories of speech in concrete situations; *i.e.*, subversive speech; obscene speech; the speech of the broadcast media and of the traditional print media; libelous speech; speech affecting associational rights; speech before hostile audiences; symbolic speech; speech that affects the right to a fair trial; and speech associated with rights of assembly and petition.[47]

Generally, restraints on freedom of speech and expression are evaluated by either or a combination of three tests, *i.e.*, (a) the **dangerous tendency doctrine** which permits limitations on speech once a rational connection has been established between the speech restrained and the danger contemplated;[48] (b) the **balancing of interests tests**, used as a standard when courts need to balance conflicting social values and individual interests, and requires a conscious and detailed consideration of the interplay of interests observable in a given situation of type of situation;[49] and (c) the **clear and present danger rule** which rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."[50]

As articulated in our jurisprudence, we have applied either the **dangerous tendency doctrine** or **clear and present danger**

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[46] See Nowak & Rotunda, *Constitutional Law* §16.1, 1131 (7th ed.2000).

[47] *Id*.

[48] *Cabansag v. Fernandez*, 102 Phil. 151 (1957); *Gonzales v. COMELEC*, 137 Phil. 471 (1969). See *People v. Perez*, 4 Phil. 599 (1905); *People v. Nabong*, 57 Phil. 455 (1933); *People v. Feleo*, 57 Phil. 451 (1933).

[49] This test was used by J. Ruiz-Castro in his Separate Opinion in *Gonzales v. COMELEC*, 137 Phil. 471, 532-537 (1969).

[50] *Cabansag v. Fernandez*, 102 Phil. 151 (1957).

test to resolve free speech challenges. More recently, we have concluded that we have generally adhered to the **clear and present danger test**.[51]

E.3. IN FOCUS: FREEDOM OF THE PRESS

Much has been written on the philosophical basis of press freedom as part of the larger right of free discussion and expression. Its practical importance, though, is more easily grasped. It is the chief source of information on current affairs. It is the most pervasive and perhaps most powerful vehicle of opinion on public questions. It is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances. It is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed. As Justice Malcolm wrote in *United States v. Bustos*:[52]

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of clear conscience.

Its contribution to the public weal makes freedom of the press deserving of extra protection. Indeed, the press benefits from certain ancillary rights. The productions of writers are classified as intellectual and proprietary. Persons who interfere or defeat the freedom to write for the press or to maintain a periodical publication are liable for damages, be they private individuals or public officials.

E.4. ANATOMY OF RESTRICTIONS: PRIOR RESTRAINT, CONTENT-NEUTRAL AND CONTENT-BASED REGULATIONS

Philippine jurisprudence, even as early as the period under the 1935 Constitution, has recognized four aspects of freedom

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[51] *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 794 (2000).

[52] See *U.S. v. Bustos*, 37 Phil. 731 (1918).

of the press. These are (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication;[53] (3) freedom of access to information; [54] and (4) freedom of circulation.[55]

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[53] The aspect of ***freedom from liability subsequent to publication*** precludes liability for completed publications of views traditionally held innocent. Otherwise, the prohibition on prior restraint would be meaningless, as the unrestrained threat of subsequent punishment, by itself, would be an effective prior restraint. Thus, opinions on public issues cannot be punished when published, merely because the opinions are novel or controversial, or because they clash with current doctrines. This fact does not imply that publishers and editors are never liable for what they print. Such freedom gives no immunity from laws punishing scandalous or obscene matter, seditious or disloyal writings, and libelous or insulting words. As classically expressed, the freedom of the press embraces at the very least the freedom to discuss truthfully and publicly matters of public concern, without previous restraint or fear of subsequent punishment. For discussion to be innocent, it must be truthful, must concern something in which people in general take a healthy interest, and must not endanger some important social end that the government by law protects. See JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 225 (2003 ed.).

[54] ***Freedom of access to information*** regarding matters of public interest is kept real in several ways. Official papers, reports and documents, unless held confidential and secret by competent authority in the public interest, are public records. As such, they are open and subject to reasonable regulation, to the scrutiny of the inquiring reporter or editor. Information obtained confidentially may be printed without specification of the source; and that source is closed to official inquiry, unless the revelation is deemed by the courts, or by a House or committee of Congress, to be vital to the security of the State. *Id.*

[55] ***Freedom of circulation*** refers to the unhampered distribution of newspapers and other media among customers and among the general public. It may be interfered with in several ways. The most important of these is *censorship*. Other ways include requiring a permit or license for the distribution of media and penalizing dissemination of copies made without it; and requiring the payment of a fee or tax, imposed either on the publisher or on the distributor, with the intent to limit or restrict circulation. These modes of interfering with the freedom to circulate have been constantly stricken down as unreasonable limitations on press freedom. Thus, imposing a license tax measured by gross receipts for the privilege of engaging in the business of advertising in any newspaper, or charging license fees for the privilege of selling religious books are impermissible restraints on the freedom of expression. *Id.* citing *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), and *American Bible Society v. City of Manila*, 101 Phil. 386 (1957). It has been held, however, even in the Philippines, that publishers and distributors

Considering that petitioner has argued that respondents' press statement constitutes a form of impermissible prior restraint, a closer scrutiny of this principle is in order, as well as its sub-specie of content-based (as distinguished from content-neutral) regulations.

At this point, it should be noted that respondents in this case deny that their acts constitute prior restraints. This presents a unique tinge to the present challenge, considering that the cases in our jurisdiction involving prior restrictions on speech never had any issue of whether the governmental act or issuance ***actually*** constituted prior restraint. Rather, the determinations were always about whether the restraint was justified by the Constitution.

Be that as it may, the determination in every case of whether there is an impermissible restraint on the freedom of speech has always been based on the circumstances of each case, including the nature of the restraint. **And in its application in our jurisdiction, the parameters of this principle have been etched on a case-to-case basis, always tested by scrutinizing the governmental issuance or act against the circumstances in which they operate, and then determining the appropriate test with which to evaluate.**

Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[56] Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices

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of newspapers and allied media cannot complain when required to pay ordinary taxes such as the sales tax. The exaction is valid only when the obvious and immediate effect is to restrict oppressively the distribution of printed matter.

[56] *Id* at 225.

of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship.[57] Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.

Given that deeply ensconced in our fundamental law is the hostility against all prior restraints on speech, and any act that restrains speech is presumed invalid,[58] and "any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows,"[59] it is important to stress not all prior restraints on speech are invalid. **Certain previous restraints may be permitted by the Constitution,** but determined only upon a careful evaluation of the challenged act as against the appropriate test by which it should be measured against.

Hence, it is not enough to determine whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is (1) a **content-neutral** regulation, *i.e.*, merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards;[60] or (2) a **content-**

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[57] *Burgos v. Chief of Staff*, 218 Phil. 754 (1984).

[58] *Gonzales v. COMELEC*, 137 Phil. 471 (1969); *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 795 (2000) ("Doctrinally, the Court has always ruled in favor of the freedom of expression, and any restriction is treated an exemption."); *Social Weather Stations v. COMELEC*, G.R. No. 147571, May 5, 2001, 357 SCRA 496 ("[A]ny system of prior restraint comes to court bearing a heavy burden against its constitutionality. It is the government which must show justification for enforcement of the restraint."). See also *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) (religious speech falls within the protection of free speech).

[59] *Iglesia ni Cristo v. CA*, 328 Phil. 893, 928 (1996), citing *Near v. Minnesota*, 283 US 697 (1931); *Bantam Books, Inc. v. Sullivan*, 372 US 58 (1963); *New York Times v. United States*, 403 US 713 (1971).

[60] See *J.B.L. Reyes v. Bagatsing*, 210 Phil. 457 (1983), *Navarro v. Villegas*, G.R. No. L-31687, February 18, 1970, 31 SCRA 730; *Ignacio v. Ela*, 99 Phil. 346 (1956); *Primicias v. Fugosa*, 80 Phil. 71 (1948).

based restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech.[61] The cast of the restriction determines the test by which the challenged act is assayed with.

When the speech restraints take the form of a **content-neutral regulation**, only a substantial governmental interest is required for its validity.[62] Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an **intermediate approach**—somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions.[63] The **test** is called **intermediate** because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. The intermediate approach has been formulated in this manner:

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[61] Determining if a restriction is content-based is not always obvious. A regulation may be content-neutral on its face but partakes of a content-based restriction in its application, as when it can be shown that the government only enforces the restraint as to prohibit one type of content or viewpoint. In this case, the restriction will be treated as a content-based regulation. The most important part of the time, place, or manner standard is the requirement that the regulation be content-neutral both as written and applied. See NOWAK & ROTUNDA, *CONSTITUTIONAL LAW* §16.1, 1133 (7th ed. 2000).

[62] See *Osmeña v. COMELEC*, 351 Phil. 692, 718 (1998). The Court looked to *Adiong v.* COMELEC, G.R. No. 103456, March 31, 1992, 207 SCRA 712, which had cited a U.S. doctrine, *viz.* "A governmental regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest."

[63] NOWAK & ROTUNDA, *CONSTITUTIONAL LAW* §16.1, 1133 (7th ed.2000). This was also called a "deferential standard of review" in *Osmeña v. COMELEC*, 351 Phil. 692, 718 (1998). It was explained that the **clear and present danger rule** is not a sovereign remedy for all free speech problems, and its application to content-neutral regulations would be tantamount to "using a sledgehammer to drive a nail when a regular hammer is all that is needed." *Id*. at 478.

A governmental regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.[64]

On the other hand, a governmental action that restricts freedom of speech or of the press **based on content** is given the **strictest scrutiny** in light of its inherent and invasive impact. Only when the challenged act has overcome the **clear and present danger rule** will it pass constitutional muster,[65] with the government having the burden of overcoming the presumed unconstitutionality.

Unless the government can overthrow this presumption, the **content-based** restraint will be struck down.[66]

With respect to **content-based** restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground."[67] As formulated, "the question in every

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[64] *Osmeña v. COMELEC*, 351 Phil. 692, 717, citing *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712. It was noted that the test was actually formulated in *United States v. O'Brien*, 391 U.S. 367 (1968), which was deemed appropriate for restrictions on speech which are content-neutral.

[65] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996). In this case, it was found that the act of respondent Board of Review for Motion Pictures and Television of rating a TV program with "X"— on the ground that it "offend[s] and constitute[s] an attack against other religions which is expressly prohibited by law"— was a form of prior restraint and required the application of the clear and present danger rule.

[66] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996); *Gonzales v. COMELEC*, 137 Phil. 471 (1969); *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780 (2000); *Social Weather Stations v. COMELEC*, G.R. No. 147571, May 5, 2001, 357 SCRA 496.

[67] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996).

case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."[68]

The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.[69]

Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest.[70] A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated.[71] The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.[72]

Thus, when the prior restraint partakes of a **content-neutral regulation,** it is subjected to an intermediate review. A **content-based regulation,**[73] however, bears a heavy presumption of

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[68] *Schenke v. United* States, 249 U.S. 47, 52 (19191), cited in *Cabansag v. Fernandez*, 102 Phil. 151 (1957); and *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 794 (2000).

[69] *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, cited in *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 795 (2000).

[70] See *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, and *Gonzales v. COMELEC*, 137 Phil. 471 (1969), cited in *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 795 (2000).

[71] See *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712.

[72] See *Osmeña v. COMELEC*, 351 Phil. 692 (1998).

[73] Parenthetically, there are two types of content-based restrictions. First, the government may be totally banning some type of speech for content (total ban). Second, the government may be requiring individuals who wish to put forth certain types of speech to certain times or places so that the type of speech does not adversely affect its environment. See NOWAK & ROTUNDA, *CONSTITUTIONAL LAW* §16.1, 1131 (7th ed.2000). Both types of content-based regulations are subject to strict scrutiny and the clear and present danger rule.

invalidity and is measured against the **clear and present danger rule**. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague.[74]

Applying the foregoing, it is clear that the challenged acts in the case at bar need to be subjected to the **clear and present danger rule,** as they are **content-based restrictions.** The acts of respondents focused solely on but one object — a specific content — fixed as these were on the alleged taped conversations between the President and a COMELEC official. Undoubtedly these did not merely provide regulations as to the time, place or manner of the dissemination of speech or expression.

E.5. Dichotomy of Free Press: Print v. Broadcast Media

Finally, comes respondents' argument that the challenged act is valid on the ground that broadcast media enjoys free speech rights that are lesser in scope to that of print media. We next explore and test the validity of this argument, insofar as it has been invoked to validate a content-based restriction on broadcast media.

The regimes presently in place for each type of media differ from one other. Contrasted with the regime in respect of books, newspapers, magazines and traditional printed matter, broadcasting, film and video have been subjected to regulatory schemes.

The dichotomy between print and broadcast media traces its origins in the United States. There, broadcast radio and television have been held to have **limited** First Amendment protection,[75]

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[74] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996); *Gonzales v. COMELEC*, 137 Phil. 471 (1969); *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780 (2000); *Social Weather Stations v. COMELEC*, G.R. No. 147571, May 5, 2001, 357 SCRA 496.

[75] This is based on a finding that "broadcast regulation involves unique considerations," and that "differences in the characteristics of new media justify differences in the First Amendment standards applied to them." *Red Lion Broad. Co. v. Federal Communications Commission [FCC]*, 395 U.S. 367, 386 (1969). See generally *National Broadcasting Co. v. United States*,

and U.S. Courts have **excluded** broadcast media from the application of the "strict scrutiny" standard that they would otherwise apply to content-based restrictions.[76] According to U.S. Courts, the **three major reasons** why broadcast media stands apart from print media are: (a) the scarcity of the frequencies by which the medium operates [*i.e.*, airwaves are physically limited while print medium may be limitless];[77] (b) its "pervasiveness" as a medium; and (c) its unique accessibility to children.[78] Because cases involving broadcast media need

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319 U.S. 190, 219 (1943) (noting that the public interest standard denoted to the FCC is an expansive power).

[76] See *Federal Communications Commission [FCC] v. Pacifica Foundation*, 438 U.S. 726 (1978); *Sable Communications v. FCC*, 492 U.S. 115 (1989); and *Reno v. American Civil Liberties Union [ACLU]*, 521 U.S. 844, 874 (1997). In these cases, U.S. courts disregarded the argument that the offended listener or viewer could simply turn the dial and avoid the unwanted broadcast [thereby putting print and broadcast media in the same footing], reasoning that because the broadcast audience is constantly tuning in and out, prior warnings cannot protect the listener from unexpected program content.

[77] *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 386 (1969). Red Lion involved the application of the fairness doctrine and whether someone personally attacked had the right to respond on the broadcast medium within the purview of FCC regulation. The court sustained the regulation. The Court in Red Lion reasoned that because there are substantially more individuals who want to broadcast than there are frequencies available, this "scarcity of the spectrum" necessitates a stricter standard for broadcast media, as opposed to newspapers and magazines. See generally *National Broadcasting v. United States*, 319 U.S. 190, 219 (1943) (noting that the public interest standard denoted to the FCC is an expansive power).

[78] See *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978); *Sable Communications v. FCC*, 492 U.S. 115 (1989); and *Reno v. American Civil Liberties Union [ACLU]*, 521 U.S. 844, 874 (1997). In *FCC v. Pacifica Foundation*, involving an FCC decision to require broadcasters to channel indecent programming away from times of the day when there is a reasonable risk that children may be in the audience, the U.S. Court found that the broadcast medium was an intrusive and pervasive one. In reaffirming that this medium should receive the most limited of First Amendment protections, the U.S. Court held that the rights of the public to avoid indecent speech trump those of the broadcaster to disseminate such speech. The justifications for this ruling were two-fold. First, the regulations were necessary because of the pervasive presence of broadcast media in

not follow "precisely the same approach that [U.S. courts] have applied to other media," nor go "so far as to demand that such regulations serve 'compelling' government interests,"[79] **they are decided on whether the "governmental restriction" is narrowly tailored to further a substantial governmental interest,"**[80] **or the intermediate test**.

As pointed out by respondents, Philippine jurisprudence has also echoed a differentiation in treatment between broadcast and print media. **Nevertheless, a review of Philippine case law on broadcast media will show that — as we have deviated with the American conception of the Bill of Rights**[81] **— we likewise did not adopt *en masse* the U.S. conception of** free speech as it relates to broadcast media, **particularly as to which test would govern content-based prior restraints**.

Our cases show two distinct features of this dichotomy. ***First,*** the difference in treatment, in the main, is in the regulatory scheme applied to broadcast media that is not imposed on traditional print media, and narrowly confined to unprotected speech (*e.g.*, obscenity, pornography, seditious and inciting

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American life, capable of injecting offensive material into the privacy of the home, where the right "to be left alone plainly outweighs the First Amendment rights of an intruder." Second, the U.S. Court found that broadcasting "is uniquely accessible to children, even those too young to read." The Court dismissed the argument that the offended listener or viewer could simply turn the dial and avoid the unwanted broadcast, reasoning that because the broadcast audience is constantly tuning in and out, prior warnings cannot protect the listener from unexpected program content.

[79] *FCC v. League of Women Voters*, 468 U.S. 364, 376 (1984).

[80] *Id. at 380*.

[81] See *Estrada v. Escritor* (Resolution), A.M. No. P-02-1651, June 22, 2006 (free exercise of religion); and *Osmeña v. COMELEC*, 351 Phil. 692, 718 (1998) (speech restrictions to promote voting rights). The Court in *Osmeña v. COMELEC*, for example, noted that it is a foreign notion to the American Constitution that the government may restrict the speech of some in order to enhance the relative voice of others [the idea being that voting is a form of speech]. But this Court then declared that the same does not hold true of the Philippine Constitution, the notion "being in fact an animating principle of that document." 351 Phil. 692, 718 (1998).

speech), or is based on a compelling government interest that also has constitutional protection, such as national security or the electoral process.

Second, regardless of the regulatory schemes that broadcast media is subjected to, the Court has consistently held that the clear and present danger test applies to content-based restrictions on media, without making a distinction as to traditional print or broadcast media.

The distinction between broadcast and traditional print media was first enunciated in *Eastern Broadcasting Corporation (DYRE) v. Dans*,[82] wherein it was held that "*[a]ll forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the clear and present danger rule . . .*"[83]

Dans was a case filed to compel the reopening of a radio station which had been summarily closed on grounds of national security. Although the issue had become moot and academic because the owners were no longer interested to reopen, the Court still proceeded to do an analysis of the case and made formulations to serve as guidelines for all inferior courts and bodies exercising quasi-judicial functions. Particularly, the Court made a detailed exposition as to what needs be considered in cases involving broadcast media. Thus:[84]

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(3) All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. **The test for limitations on freedom of expression continues to be the clear and present danger rule,** that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the

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[82] G.R. No. 59329, July 19, 1985, 137 SCRA 628.

[83] *Id*.

[84] *Id.* at 634-637.

lawmaker has a right to prevent, In his *Constitution of the Philippines* (2nd Edition, pp. 569-570) Chief Justice Enrique M. Fernando cites at least nine of our decisions which apply the test. More recently, the clear and present danger test was applied in J.B.L. Reyes in behalf of the *Anti-Bases Coalition v. Bagatsing*. (4) The clear and present danger test, however, does not lend itself to a simplistic and all embracing interpretation applicable to all utterances in all forums.

Broadcasting has to be licensed. Airwave frequencies have to be allocated among qualified users. A broadcast corporation cannot simply appropriate a certain frequency without regard for government regulation or for the rights of others.

All forms of communication are entitled to the broad protection of the freedom of expression clause. Necessarily, however, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.

The *American Court in Federal Communications Commission v. Pacifica Foundation* (438 U.S. 726), confronted with a patently offensive and indecent regular radio program, explained why radio broadcasting, more than other forms of communications, receives the most limited protection from the free expression clause. First, broadcast media have established a uniquely pervasive presence in the lives of all citizens, Material presented over the airwaves confronts the citizen, not only in public, but in the privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion picture theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out.

Similar considerations apply in the area of national security.

The broadcast media have also established a uniquely pervasive presence in the lives of all Filipinos. Newspapers and current books are found only in metropolitan areas and in the poblaciones of municipalities accessible to fast and

regular transportation. Even here, there are low income masses who find the cost of books, newspapers, and magazines beyond their humble means. Basic needs like food and shelter perforce enjoy high priorities.

On the other hand, the transistor radio is found everywhere. The television set is also becoming universal. Their message may be simultaneously received by a national or regional audience of listeners including the indifferent or unwilling who happen to be within reach of a blaring radio or television set. The materials broadcast over the airwaves reach every person of every age, persons of varying susceptibilities to persuasion, persons of different I.Q.s and mental capabilities, persons whose reactions to inflammatory or offensive speech would be difficult to monitor or predict. The impact of the vibrant speech is forceful and immediate. Unlike readers of the printed work, the radio audience has lesser opportunity to cogitate, analyze, and reject the utterance.

(5) The clear and present danger test, therefore, must take the particular circumstances of broadcast media into account. The supervision of radio stations-whether by government or through self-regulation by the industry itself calls for thoughtful, intelligent and sophisticated handling.

The government has a right to be protected against broadcasts which incite the listeners to violently overthrow it. Radio and television may not be used to organize a rebellion or to signal the start of widespread uprising. At the same time, the people have a right to be informed. Radio and television would have little reason for existence if broadcasts are limited to bland, obsequious, or pleasantly entertaining utterances. Since they are the most convenient and popular means of disseminating varying views on public issues, they also deserve special protection.

(6) The freedom to comment on public affairs is essential to the vitality of a representative democracy. In the 1918 case of *United States v. Bustos* (37 Phil. 731) this Court was already stressing that.

The interest of society and the maintenance of good government demand a full discussion of public affairs.

> Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.
>
> (7) Broadcast stations deserve the special protection given to all forms of media by the due process and freedom of expression clauses of the Constitution. [Citations omitted]

It is interesting to note that the Court in *Dans* adopted the arguments found in U.S. jurisprudence to justify differentiation of treatment (*i.e.*, the scarcity, pervasiveness and accessibility to children), **but only after categorically declaring that "the test for limitations on freedom of expression continues to be the clear and present danger rule," for all forms of media, whether print or broadcast.** Indeed, a close reading of the above-quoted provisions would show that the differentiation that the Court in *Dans* referred to was narrowly restricted to what is otherwise deemed as "unprotected speech" (*e.g.*, obscenity, national security, seditious and inciting speech), or to validate a licensing or regulatory scheme necessary to allocate the limited broadcast frequencies, which is absent in print media. Thus, when this Court declared in *Dans* that the freedom given to broadcast media was "somewhat lesser in scope than the freedom accorded to newspaper and print media," it was not as to what test should be applied, but the context by which requirements of licensing, allocation of airwaves, and application of norms to unprotected speech.[85]

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[85] There is another case wherein the Court had occasion to refer to the differentiation between traditional print media and broadcast media, but of limited application to the case at bar inasmuch as the issues did not invoke a free-speech challenge, but due process and equal protection. See *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC*, 352 Phil. 153 (1998) (challenge to legislation requiring broadcast stations to provide COMELEC Time free of charge).

In the same year that the *Dans* case was decided, it was reiterated in *Gonzales v. Katigbak*,[86] that the test to determine free expression challenges was the clear and present danger, again without distinguishing the media.[87] *Katigbak*, strictly speaking, does not treat of broadcast media but motion pictures. Although the issue involved obscenity standards as applied to movies,[88] the Court concluded its decision with the following *obiter dictum* that a less liberal approach would be used to resolve obscenity issues in television as opposed to motion pictures:

> All that remains to be said is that the ruling is to be limited to the concept of obscenity applicable to motion pictures. It is the consensus of this Court that where television is concerned, a less liberal approach calls for observance. This is so because unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely be among the avid viewers of the programs therein shown. . . . It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.

More recently, in resolving a case involving the conduct of exit polls and dissemination of the results by a broadcast company, we reiterated that the clear and present danger rule is the test we unquestionably adhere to issues that involve freedoms of speech and of the press.[89]

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[86] G.R. No. 69500, July 22, 1985, 137 SCRA 717. In this case, the classification of a movie as "For Adults Only" was challenged, with the issue focused on obscenity as basis for the alleged invasion of the right to freedom on artistic and literary expression embraced in the free speech guarantees of the Constitution. The Court held that the test to determine free expression was the clear and present danger rule. The Court found there was an abuse of discretion, but did not get enough votes to rule it was grave. The decision specifically stated that the ruling in the case was limited to concept of obscenity applicable to motion pictures. *Id.* at 723-729.

[87] *Id.* at 725.

[88] *Id.*

[89] *ABS-CBN Broadcasting Corp. v. COMELEC*, 380 Phil. 780, 794 (COMELEC Resolution restraining ABS-CBN, a corporation engaged in broadcast media of television and radio, from conducting exit surveys after the 1998 elections). Although the decision was rendered after the 1998 elections,

This is not to suggest, however, that the clear and present danger rule has been applied to all cases that involve the broadcast media. The rule applies to all media, including broadcast, but only when the challenged act is a content-based regulation that infringes on free speech, expression and the press. Indeed, in *Osmena v. COMELEC,*[90] which also involved broadcast media, the Court refused to apply the clear and present danger rule to a COMELEC regulation of time and manner of advertising of political advertisements because the challenged restriction was content-neutral.[91] And in a case involving due process and equal protection issues, the Court in *Telecommunications and Broadcast Attorneys of the Philippines v. COMELEC* [92] treated a restriction imposed on a broadcast media as a reasonable condition for the grant of the media's franchise, without going into which test would apply.

That broadcast media is subject to a regulatory regime absent in print media is observed also in other jurisdictions, where the statutory regimes in place over broadcast media include elements of licensing, regulation by administrative bodies, and censorship. As explained by a British author:

The **reasons** behind treating broadcast and films differently from the print media differ in a number of respects, but have a common historical basis. The stricter system of controls seems to have been adopted in answer to the view that owing to their **particular impact**

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the Court proceeded to rule on the case to rule on the issue of the constitutionality of holding exit polls and the dissemination of data derived therefrom. The Court ruled that restriction on exit polls must be tested against the clear and present danger rule, the rule we "unquestionably" adhere to. The framing of the guidelines issued by the Court clearly showed that the issue involved not only the conduct of the exit polls but also its dissemination by broadcast media. And yet, the Court did not distinguish, and still applied the clear and present danger rule.

[90] 351 Phil. 692 (1998) (challenge to legislation which sought to equalize media access through regulation).

[91] *Id.* at 718.

[92] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC*, 352 Phil. 153 (1998) (challenge to legislation requiring broadcast stations to provide COMELEC Time free of charge).

on audiences, films, videos and broadcasting require a system of prior restraints, whereas it is now accepted that books and other printed media do not. These media are viewed as beneficial to the public in a number of respects, but are also seen as possible sources of harm.[93]

Parenthetically, these justifications are now the subject of debate. **Historically**, the scarcity of frequencies was thought to provide a rationale. However, **cable and satellite television** have enormously increased the number of actual and potential channels. **Digital technology** will further increase the number of channels available. But still, the argument persists that broadcasting is the most influential means of communication, since it comes into the home, and so much time is spent watching television. Since it has a unique impact on people and affects children in a way that the print media normally does not, that regulation is said to be necessary in order to preserve pluralism. It has been argued further that a significant main threat to free expression — in terms of diversity — comes not from government, but from private corporate bodies. These developments show a need for a reexamination of the traditional notions of the scope and extent of broadcast media regulation.[94]

The emergence of digital technology — which has led to the convergence of broadcasting, telecommunications and the computer industry — has likewise led to the question of whether the regulatory model for broadcasting will continue to be appropriate in the converged environment.[95] Internet, for example, remains largely unregulated, yet the Internet and the broadcast media share similarities,[96] and the rationales used to support

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[93] Helen Fenwick, *CIVIL LIBERTIES AND HUMAN RIGHTS* 296 (3rd ed. 2002).

[94] *Id*.

[95] Stephen J. Shapiro, *How Internet Non-Regulation Undermines The Rationales Used To Support Broadcast Regulation*, 8-FALL MEDIA L. & POL'Y 1, 2 (1999).

[96] Technological advances, such as software that facilitates the delivery of live, or real-time, audio and video over the Internet, have enabled Internet content

broadcast regulation apply equally to the Internet.[97] Thus, it has been argued that courts, legislative bodies and the government agencies regulating media must agree to regulate both, regulate neither or develop a new regulatory framework and rationale to justify the differential treatment.[98]

F. The Case At Bar

Having settled the applicable standard to content-based restrictions on broadcast media, let us go to its application to the case at bar. To recapitulate, a governmental action that restricts freedom of speech or of the press **based on content** is given the **strictest scrutiny,** with the **government having the burden** of overcoming the presumed unconstitutionality by the **clear and present danger rule**. This rule applies equally to **all** kinds of media, **including broadcast media**.

This outlines the **procedural map** to follow in cases like the one at bar as it spells out the following: (a) the test; (b) the presumption; (c) the burden of proof; (d) the party to discharge the burden; and (e) the quantum of evidence necessary. On the basis of the records of the case at bar, respondents who have the burden to show that these acts do not abridge freedom of speech and of the press failed to hurdle the clear and present danger test. It appears that the **great evil** which government

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providers to offer the same services as broadcasters. Indeed, these advancements blur the distinction between a computer and a television. *Id*. at 13.

[97] *Id*.

[98] The current rationales used to support regulation of the broadcast media become unpersuasive in light of the fact that the unregulated Internet and the regulated broadcast media share many of the same features. *Id*. In other words, as the Internet and broadcast media become identical, for all intents and purposes, it makes little sense to regulate one but not the other in an effort to further First Amendment principles. Indeed, as Internet technologies advance, broadcasters will have little incentive to continue developing broadcast programming under the threat of regulation when they can disseminate the same content in the same format through the unregulated Internet. In conclusion, "the theory of partial regulation, whatever its merits for the circumstances of the last fifty years, will be unworkable in the media landscape of the future." *Id*. at 23.

wants to prevent is the airing of a tape recording in alleged violation of the anti-wiretapping law. The records of the case at bar, however, are confused and confusing, and respondents' evidence falls short of satisfying the clear and present danger test. **Firstly**, the various statements of the Press Secretary obfuscate the identity of the voices in the tape recording. **Secondly**, the integrity of the taped conversation is also suspect. The Press Secretary showed to the public two versions, one supposed to be a "complete" version and the other, an "altered" version. **Thirdly**, the evidence of the respondents on the who's and the how's of the wiretapping act is ambivalent, especially considering the tape's different versions. The identity of the wire-tappers, the manner of its commission and other related and relevant proofs are some of the invisibles of this case. **Fourthly**, given all these unsettled facets of the tape, it is even arguable whether its airing would violate the anti-wiretapping law.

We rule that **not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press**. Our **laws are of different kinds** and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, **by itself and without more**, cannot support suppression of free speech and free press. In fine, **violation of law is just a factor**, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The **totality of the injurious effects** of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. In calling for a careful and calibrated measurement of the circumference of all these factors to determine compliance with the clear and present danger test, **the Court should not be misinterpreted as devaluing violations of law**. By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, **the need to prevent their violation cannot *per se* trump the exercise of free speech and free press, a preferred**

right whose breach can lead to greater evils. For this failure of the respondents alone to offer proof to satisfy the clear and present danger test, the Court has no option but to uphold the exercise of free speech and free press. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the **national security of the State**.

This is not all the faultline in the stance of the respondents. We slide to the issue of whether the **mere press statements** of the Secretary of Justice and of the NTC in question constitute a form of content-based prior restraint that has transgressed the Constitution. In resolving this issue, we hold that **it is not decisive that the press statements made by respondents were not reduced in or followed up with formal orders or circulars. It is sufficient that the press statements were made by respondents while in the exercise of their official functions**. Undoubtedly, respondent Gonzales made his statements as Secretary of Justice, while the NTC issued its statement as the regulatory body of media. **Any act done, such as a speech uttered, for and on behalf of the government in an official capacity is covered by the rule on prior restraint. The concept of an "act" does not limit itself to acts already converted to a formal order or official circular. Otherwise, the non formalization of an act into an official order or circular will result in the easy circumvention of the prohibition on prior restraint.** The press statements at bar are acts that should be struck down as they constitute impermissible forms of prior restraints on the right to free speech and press.

There is enough evidence of **chilling effect** of the complained acts on record. The **warnings** given to media **came from no less** the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. **After the warnings,** the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the

press. This silence on the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation.

The constitutional imperative for us to strike down unconstitutional acts should always be exercised with care and in light of the distinct facts of each case. For there are no hard and fast rules when it comes to slippery constitutional questions, and the limits and construct of relative freedoms are never set in stone. Issues revolving on their construct must be decided on a case to case basis, always based on the peculiar shapes and shadows of each case. But in cases where the challenged acts are patent invasions of a constitutionally protected right, **we should be swift** in striking them down as nullities per se. **A blow too soon struck for freedom is preferred than a blow too late.**

IN VIEW WHEREOF, the petition is *GRANTED*. The writs of *certiorari* and prohibition are hereby issued, nullifying the official statements made by respondents on June 8, and 11, 2005 warning the media on airing the alleged wiretapped conversation between the President and other personalities, for constituting unconstitutional prior restraint on the exercise of freedom of speech and of the press

SO ORDERED.

Ynares-Santiago and *Reyes, JJ.*, concur.

Sandoval-Gutierrez, J., see separate concurring opinion.

Carpio, J., see separate concurring opinion.

Austria-Martinez and *Carpio Morales, JJ.,* joins in the separate concurring opinion of *J.* Carpio.

Azcuna, J., concurs in a separate opinion.

Quisumbing, J., concurs in the result and joins in the separate concurring opinion of *J.* Carpio.

Tinga, J., see separate opinion (dissenting and concurring).

Velasco, Jr., J., see separate concurring and dissenting opinion.

Corona, J., joins the dissent of *J.* Nachura.

Chico-Nazario, J., see separate dissenting opinion.

Nachura, J., see dissenting opinion.

Leonardo-de Castro, J., joins the dissent of *J.* Nazario and *J.* Nachura.

CONCURRING OPINION

SANDOVAL-GUTIERREZ, *J.*:

"Where they have burned books,
they will end in burning human beings."

These are the prophetic words of the German Author Heinrich Heine when the Nazis fed to the flames the books written by Jewish authors. True enough, the mass extermination of Jews followed a few years later. **What was first a severe form of book censorship ended up as genocide.**

Today, I vote to grant the writs of *certiorari* and prohibition mindful of Heine's prophecy. The issuance of the Press Release by the National Telecommunications Commission (NTC) is a form of censorship. To allow the broadcast media to be burdened by it is the first misstep leading to the strangling of our citizens. We must strike this possibility while we still have a voice.

I fully concur with the well-written *ponencia* of Mr. Chief Justice Reynato S. Puno and that of Mr. Justice Antonio T. Carpio.

The *Universal Declaration of Human Rights* guarantees that **"everyone has the right to freedom of opinion and expression."** Accordingly, this right **"includes the freedom to hold opinions without interference and impart information and ideas through any media regardless of frontiers."**[1] At the same time, our Constitution mandates that **"no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances."**

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[1] Article 19, Adopted on December 10, 1948.

These guarantees are testaments to the value that humanity accords to the above-mentioned freedoms — commonly summed up as **freedom of expression**. The justifications for this high regard are specifically identified by Justice Mclachlin of the Canadian Supreme Court in *Her Majesty The Queen v. Keegstra*,[2] to wit: **(1)** Freedom of expression promotes the free flow of ideas essential to political democracy and democratic institutions, and limits the ability of the State to subvert other rights and freedoms; **(2)** it promotes a marketplace of ideas, which includes, but is not limited to, the search for truth; **(3)** it is intrinsically valuable as part of the self-actualization of speakers and listeners; and **(4)** it is justified by the dangers for good government of allowing its suppression.

These are the same justifications why censorship is anathema to freedom of expression. Censorship is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey.[3] Censorship may come in the form of **prior restraint** or **subsequent punishment**. **Prior restraint** means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[4] Its most blatant form is a system of licensing administered by an executive officer.[5] Similar to this is judicial prior restraint which takes the form of an injunction against publication.[6] And equally objectionable as prior restraint is the imposition of license taxes that renders publication or advertising

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[2] 3 S.C.R.A. 697 (1990).

[3] Separate Opinion of Chief Justice Hilario G. Davide, Jr. (ret.), in *Kapisanan ng mga Brodkasters sa Pilipinas*, G.R. No. 102983, March 5, 1992.

[4] Bernas, *The 1987 Constitution of the Republic of the Philippines, A Commentary*, 2003 ed., p. 225.

[5] *Times Film Corp. v. City of Chicago*, 365 U.S. 43 (1961); *Freedman v. Maryland*, 380 U.S. 51 (1965).

[6] *Near v. Minnesota*, 283 U.S. 697 (1931); *New York Times Co. v. United States*, 403 U.S. 713 (1971).

more burdensome.[7] On the other hand, **subsequent punishment** is the imposition of liability to the individual exercising his freedom. It may be in any form, such as penal, civil or administrative penalty.

I

The Issuance of the Press Release Constitutes Censorship

In the case at bar, the first issue is whether the Press Release of the NTC constitutes censorship. Reference to its pertinent portions is therefore imperative. Thus:

> Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, it is the position of the [NTC] that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations. It has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby **warned that their broadcast/airing of such false information and/or willful misrepresentation shall be a just cause for the suspension, revocation and /or cancellation of the licenses or authorizations issued to said companies.**
>
> **x x x x x x x x x**
>
> **The [NTC] will not hesitate, after observing the requirements of due process, to apply with full force the provisions of said Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.**

The **threat of suspension, revocation** and/or **cancellation** of the **licenses** or **authorization** hurled against radio and television stations should they air the *Garci Tape* is definitely a form of

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[7] *Supra*, footnote 4, citing *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) and *American Bible Society v. City of Manila*, 101 Phil. 386 (1957).

prior restraint. The license or authorization is the life of every media station. If withheld from them, their very existence is lost. Surely, no threat could be more discouraging to them than the suspension or revocation of their licenses. In *Far Eastern Broadcasting v. Dans,*[8] while the need for licensing was rightly defended, the defense was for the purpose, **not of regulation of broadcast content**, but for the proper allocation of airwaves. In the present case, what the NTC intends to regulate are the contents of the *Garci Tapes* — the alleged taped conversation involving the President of the Philippines and a Commissioner of the Commission on Election. The reason given is that it is a "false information or willful misrepresentation." As aptly stated by Mr. Justice Antonio T. Carpio that "the NTC action in restraining the airing of the *Garci Tapes* is a content-based prior restraint because it is directed at the message of the *Garci Tapes*."

History teaches us that licensing has been one of the most potent tools of censorship. This powerful bureaucratic system of censorship in Medieval Europe was the target of John Milton's speech *Areopagita* to the Parliament of England in 1644.[9] Under the Licensing Act of 1643, all printing presses and printers were licensed and nothing could be published without the prior approval of the State or the Church Authorities. Milton vigorously opposed it on the ground of freedom of the press. His strong advocacy led to its collapse in 1695. In the U.S., the first encounter with a law imposing a prior restraint is in *Near v. Minnesota.*[10] Here, the majority voided the law authorizing the permanent enjoining of future violations by any newspaper or periodical if found to have published or circulated an "obscene, lewd and lascivious" or "malicious, scandalous and defamatory" issue. While the dissenters maintained that the injunction constituted no prior restraint, inasmuch as that doctrine applied to prohibitions of publication without advance approval of an executive official,

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[8] 137 SCRA 628 (1985).

[9] http://www.beacon for freedom.org/about_project/history.html, *The Long History of Censorship,* p. 3.

[10] 283 U.S. 697 (1931).

the majority deemed the difference of no consequence, since in order to avoid a contempt citation, the newspaper would have to clear future publications in advance with the judge. In other similar cases, the doctrine of prior restraint was frowned upon by the U.S. Court as it struck down loosely drawn statutes and ordinances requiring licenses to hold meetings and parades and to distribute literature, with uncontrolled discretion in the licensor whether or not to issue them, and as it voided other restrictions on First Amendment rights.[11] Then there came the doctrine that prior licensing or permit systems were held to be constitutionally valid so long as the discretion of the issuing official is limited to questions of times, places and manners.[12] And in *New York Times Company v. United States*,[13] the same Court, applying the doctrine of prior restraint from *Near*, considered the claims that the publication of the Pentagon Papers concerning the Vietnam War would interfere with foreign policy and prolong the war too speculative. It held that such claim could not overcome the strong presumption against prior restraints. **Clearly, content-based prior restraint is highly abhorred in every jurisdiction.**

Another objectionable portion of the NTC's Press Release is the warning that it will not hesitate "**to apply with full force the provisions of the Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.** This is a threat of a subsequent punishment, an equally abhorred form of censorship. This should not also be countenanced. It must be stressed that the evils to be prevented are not the censorship of the press merely, but **any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely**

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[11] *Lovell v. Griffin*, 303 U.S. 444 (1938); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Kunz v. New York*, 340 U.S. 290 (1951); *Nietmotko v. Maryland*, 340 U.S. 268 (1951); *Staub v. City of Baxley*, 355 U.S. 313 (1958).

[12] *Cox v. New Hampshire*, 312 U.S. 569 (1941); *Paulos v. New Hampshire*, 345 U.S. 395 (1953).

[13] 403 U.S. 713. 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971).

essential to prepare the people for an intelligent exercise of their rights as citizens.[14] There is logic in the proposition that the liberty of the press will be rendered a **"mockery and a delusion"** if, while every man is at liberty to publish what he pleases, the public authorities might nevertheless punish him for harmless publications. In this regard, the fear of subsequent punishment has the same effect as that of prior restraint.

It being settled that the NTC's Press Release constitutes censorship of broadcast media, the next issue is whether such censorship is justified.

II

The Issuance of the Press Release Constitutes an Unjustified Form of Censorship

Settled is the doctrine that any system of prior restraint of expression comes to this Court bearing a presumption against its constitutional validity.[15] The Government thus carries a heavy burden of showing justification for the enforcement of such a restraint.[16]

Various tests have been made to fix a standard by which to determine what degree of evil is sufficiently substantial to justify a resort to abridgment of the freedom of expression as a means of protection and how clear and imminent and likely the danger is. Among these tests are the *Clear and Present Danger, Balancing, Dangerous Tendency, Vagueness, Overbreadth, and Least Restrictive Means.*

Philippine jurisprudence shows that we have generally adhered to the *clear and present danger test.* Chief Justice Puno, in his *ponencia*, has concluded that the Government has not hurdled this test. He cited four (4) reasons to which I fully concur.

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[14] T. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative powers of the States of the American Union* 885-86 (8th ed. 1927).

[15] *Bantam Books, Inc. vs. Sullivan,* 372 U.S. 58 (1963).

[16] *Supra,* p. 228, footnote 4.

The justification advanced by the NTC in issuing the Press Release is that **"the taped Conversations have not been duly authenticated nor could it be said at this time that the tape contains an accurate and truthful representation of what was recorded therein"** and that "**its continuous airing or broadcast is a continuing violation of the Anti-Wiretapping Law."**

To prevent the airing of the *Garci Tapes* on the premise that their contents may or may not be true is not a valid reason for its suppression. In *New York Times v. Sullivan*,[17] Justice William Brennan, Jr. states that the authoritative interpretation of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth — whether administered by judges, jurists, or administrative officials — and especially not one that puts the burden of proving truth on the speaker. He stressed that **"the constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and belief which are offered."** Moreover, the fact that the tapes were obtained through violation of the *Anti-Wiretapping Law* does not make the broadcast media privy to the crime. **It must be stressed that it was a government official who initially released the *Garci Tapes*, not the media.**

In view of the presence of various competing interests, I believe the present case must also be calibrated using the **balancing test.** As held in *American Communication Association v. Douds*,[18] **"when a particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgement of speech, the duty of the courts is to determine which of these two conflicting interests demand the greater protection under the circumstances presented.** In the present case, perched at the one hand of the scale is the government's interest to maintain public order, while on the other hand is the interest of the public to know the truth about the last national election and to be fully informed. Which of these interests should be advanced? I believe it should be that of the people.

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[17] 376 U.S. 254 (1964).

[18] 339 U.S. 382 (1950).

The right of the people to know matters pertaining to the integrity of the election process is of paramount importance. It cannot be sideswiped by the mere speculation that a public disturbance will ensue. **Election is a sacred instrument of democracy. Through it, we choose the people who will govern us. We entrust to them our businesses, our welfare, our children, our lives.** Certainly, each one of us is entitled to know how it was conducted. What could be more disheartening than to learn that there exists a tape containing conversations that compromised the integrity of the election process. The doubt will forever hang over our heads, doubting whether those who sit in government are legitimate officials. In matters such as these, leaving the people in darkness is not an alternative course. People ought to know the truth. Yes, the airing of the *Garci Tapes* may have serious impact, but this is not a valid basis for suppressing it. As Justice Douglas explained in his concurring opinion in the *New York Times,* **"the dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. A debate of large proportions goes in the nation over our posture in Vietnam. Open debate and discussion of public issues are vital to our national health."**

More than ever, now is the time to uphold the right of the Filipinos to information on matters of public concern. As Chief Justice Hughes observed: "The administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and liberty by criminal alliances and official neglect, emphasize the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any less necessary the immunity of the press from previous restraint in dealing with official misconduct."[19] Open discussions of our political leaders, as well as their actions, are essential for us to

[19] *Near v. Minnesota,* 179 Minn. 40; 228 N.W. 326.

make informed judgments. Through these, we can influence our government's actions and policies. **Indeed, no government can be responsive to its citizens who have refrained from voicing their discontent because of fear of retribution.**

III

A free press is an indispensable component of a democratic and free society.

Burke once called the Press the *Fourth Estate* in the Parliament. This is because its ability to influence public opinion made it an important source in the governance of a nation. It is considered one of the foundations of a democratic society. One sign of its importance is that when a tyrant takes over a country, his first act is to muzzle the press. **Courts should therefore be wary in resolving cases that has implication on the freedom of the press —** to the end that the freedom will never be curtailed absent a recognized and valid justification.

In fine let it be said that the struggle for freedom of expression is as ancient as the history of censorship. From the ancient time when Socrates was poisoned for his unorthodox views to the more recent Martial Law Regime in our country, the lesson learned is that censorship is the biggest obstacle to human progress. Let us not repeat our sad history. Let us not be victims again now and in the future.

WHEREFORE, I vote to *CONCUR* with the majority opinion.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

The Case

This is a petition for the writs of *certiorari* and prohibition to set aside "acts, issuances, and orders" of respondents Secretary of Justice Raul M. Gonzalez (respondent Gonzales) and the National Telecommunications Commission (NTC), particularly an NTC "press release" dated 11 June 2005, warning radio and television stations against airing taped conversations allegedly

between President Gloria Macapagal-Arroyo and Commission on Elections (COMELEC) Commissioner Virgilio Garcillano (Garcillano)[1] under pain of suspension or revocation of their airwave licenses.

The Facts

On 24 June 2004, Congress, acting as national board of canvassers, proclaimed President Arroyo winner in the 2004 presidential elections.[2] President Arroyo received a total of 12,905,808 votes, 1,123,576 more than the votes of her nearest rival, Fernando Poe, Jr. Sometime before 6 June 2005, the radio station dzMM aired the Garci Tapes where the parties to the conversation discussed "rigging" the results of the 2004 elections to favor President Arroyo. On 6 June 2005, Presidential spokesperson Ignacio Bunye (Bunye) held a press conference in Malacañang Palace, where he played before the presidential press corps two compact disc recordings of conversations between a woman and a man. Bunye identified the woman in both recordings as President Arroyo but claimed that the contents of the second compact disc had been "spliced" to make it appear that President Arroyo was talking to Garcillano.

However, on 9 June 2005, Bunye backtracked and stated that the woman's voice in the compact discs was not President Arroyo's after all.[3] Meanwhile, other individuals went public, claiming possession of the genuine copy of the Garci Tapes.[4]

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[1] The taped conversations are referred to here as the "Garci Tapes."

[2] Report of the Joint Committee on the Canvass of Votes for the Presidential and Vice-Presidential Candidates in the May 10, 2004 Elections, dated 23 June 2004.

[3] In their Comment to the petition, the NTC and respondent Gonzalez only mentioned Bunye's press conference of 6 June 2005. However, respondents do not deny petitioner's assertion that the 9 June 2005 press conference also took place.

[4] On 7 June 2005, Atty. Alan Paguia, counsel of former President Joseph Ejercito Estrada, gave to a radio station two tapes, including the Garci Tapes, which he claimed to be authentic. On 10 June 2005, Samuel Ong, a high ranking official of the National Bureau of Investigation, presented to the media the alleged "master tape" of the Garci Tapes.

Respondent Gonzalez ordered the National Bureau of Investigation to investigate media organizations which aired the Garci Tapes for possible violation of Republic Act No. 4200 or the Anti-Wiretapping Law.

On 11 June 2005, the NTC issued a press release warning radio and television stations that airing the Garci Tapes is a "cause for the suspension, revocation and/or cancellation of the licenses or authorizations" issued to them.[5] On 14 June

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[5] The press release reads in its entirety:

NTC GIVES FAIR WARNING TO RADIO AND TELEVISION OWNERS/OPERATORS TO OBSERVE ANTI-WIRE TAPPING LAW AND PERTINENT NTC CIRCULARS ON PROGRAM STANDARDS

In view of the unusual situation the country is in today, The (sic) National Telecommunications Commission (NTC) calls for sobriety among the operators and management of all radio and television stations in the country and reminds them, especially all broadcasters, to be careful and circumspect in the handling of news reportage, coverages [sic] of current affairs and discussion of public issues, by strictly adhering to the pertinent laws of the country, the current program standards embodied in radio and television codes and the existing circulars of the NTC.

The NTC said that now, more than ever, the profession of broadcasting demands a high sense of responsibility and discerning judgment of fairness and honesty at all times among broadcasters amidst all these rumors of unrest, destabilization attempts and controversies surrounding the alleged wiretapping of President GMA (sic) telephone conversations.

Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC warns all radio stations and television networks owners/operators that the conditions of the authorizations and permits issued to them by Government like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use its stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the Commission that certain personalities are in possession of alleged taped conversation which they claim, (sic) involve the President of the Philippines and a Commissioner of the COMELEC regarding their supposed violation of election laws. These personalities have admitted that the taped conversations are product of illegal wiretapping operations.

Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, (sic) it is the position of the Commission that the continuous airing or broadcast of the said taped conversations

2005, NTC officers met with officers of the broadcasters group, *Kapisanan ng mga Broadcasters sa Pilipinas* (KBP), to dispel fears of censorship. The NTC and KBP issued a joint press statement expressing commitment to press freedom.[6]

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by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations. If it has been (sic) subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.

In addition to the above, the Commission reiterates the pertinent NTC circulars on program standards to be observed by radio and television stations. NTC Memorandum Circular No. 111-12-85 explicitly states, among others, that "all radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech play, act or scene or other matters being broadcast and/or telecast if the tendency thereof" is to disseminate false information or such other willful misrepresentation, or to propose and/or incite treason, rebellion or sedition. The foregoing directive had been reiterated in NTC Memorandum Circular No. 22-89 which, in addition thereto, prohibited radio, broadcasting and television stations from using their stations to broadcast or telecast any speech, language or scene disseminating false information or willful misrepresentation, or inciting, encouraging or assisting in subversive or treasonable acts.

The Commission will not hesitate, after observing the requirements of due process, to apply with full force the provisions of the said Circulars and their accompanying sanctions or erring radio and television stations and their owners/operators.

[6] The joint press statement reads (*Rollo*, pp. 62-63):

JOINT PRESS STATEMENT: THE NTC AND KBP

1. Call for sobriety, responsible journalism, and of law, and the radio and television Codes.
2. NTC respects and will not hinder freedom of the press and the right to information on matters of public concern. KBP & its members have always been committed to the exercise of press freedom with high sense of responsibility and discerning judgment of fairness and honesty.
3. NTC did not issue any MC [Memorandum Circular] or Order constituting a restraint of press freedom or censorship. The NTC further denies and does not intend to limit or restrict the interview of members of the opposition or free expression of views.

On 21 June 2005, petitioner Francisco I. Chavez (petitioner), as citizen, filed this petition to nullify the "acts, issuances, and orders" of the NTC and respondent Gonzalez (respondents) on the following grounds: (1) respondents' conduct violated freedom of expression and the right of the people to information on matters of public concern under Section 7, Article III of the Constitution, and (2) the NTC acted *ultra vires* when it warned radio and television stations against airing the Garci Tapes.

In their Comment to the petition, respondents raised threshold objections that (1) petitioner has no standing to litigate and (2) the petition fails to meet the case or controversy requirement in constitutional adjudication. On the merits, respondents claim that (1) the NTC's press release of 11 June 2005 is a mere "fair warning," not censorship, cautioning radio and television networks on the lack of authentication of the Garci Tapes and of the consequences of airing false or fraudulent material, and (2) the NTC did not act *ultra vires* in issuing the warning to radio and television stations.

In his Reply, petitioner belied respondents' claim on his lack of standing to litigate, contending that his status as a citizen asserting the enforcement of a public right vested him with sufficient interest to maintain this suit. Petitioner also contests respondents' claim that the NTC press release of 11 June 2005 is a mere warning as it already prejudged the Garci Tapes as inauthentic and violative of the Anti-Wiretapping Law, making it a "cleverly disguised x x x gag order."

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4. What is being asked by NTC is that the exercise of press freedom is done responsibly.

5. KBP has program standards that KBP members will observe in the treatment of news and public affairs programs. These include verification of sources, non-airing of materials that would constitute inciting to sedition and/or rebellion.

6. The KBP Codes also require that no false statement or willful misrepresentation is made in the treatment of news or commentaries.

7. The supposed wiretapped tapes should be treated with sensitivity and handled responsibly giving due consideration to the process being undertaken to verify and validate the authenticity and actual content of the same.

ISSUE

The principal issue for resolution is whether the NTC warning embodied in the press release of 11 June 2005 constitutes an impermissible prior restraint on freedom of expression.

I vote to (1) grant the petition, (2) declare the NTC warning, embodied in its press release dated 11 June 2005, an unconstitutional prior restraint on protected expression, and (3) enjoin the NTC from enforcing the same.

1. Standing to File Petition

Petitioner has standing to file this petition. When the issue involves freedom of expression, as in the present case, any citizen has the right to bring suit to question the constitutionality of a government action in violation of freedom of expression, whether or not the government action is directed at such citizen. The government action may chill into silence those to whom the action is directed. Any citizen must be allowed to take up the cudgels for those who have been cowed into inaction because freedom of expression is a vital public right that must be defended by everyone and anyone.

Freedom of expression, being fundamental to the preservation of a free, open and democratic society, is of *transcendental importance* that must be defended by every patriotic citizen at the earliest opportunity. We have held that any concerned citizen has standing to raise an issue of *transcendental importance to the nation*,[7] and petitioner in this present petition raises such issue.

2. Overview of Freedom of Expression, Prior Restraint and Subsequent Punishment

Freedom of expression is the foundation of a free, open and democratic society. Freedom of expression is an indispensable condition[8] to the exercise of almost all other civil and political

[7] *David v. Macapagal-Arroyo*, G.R. No. 171396, 3 May 2006, 489 SCRA 160.

[8] In *Palko v. Connecticut*, 302 U.S. 319 (1937), Justice Benjamin Cardozo wrote that freedom of expression is "the matrix, the indispensable condition, of nearly every other form of freedom."

rights. No society can remain free, open and democratic without freedom of expression. Freedom of expression guarantees full, spirited, and even contentious discussion of all social, economic and political issues. To survive, a free and democratic society must zealously safeguard freedom of expression.

Freedom of expression allows citizens to expose and check abuses of public officials. Freedom of expression allows citizens to make informed choices of candidates for public office. Freedom of expression crystallizes important public policy issues, and allows citizens to participate in the discussion and resolution of such issues. Freedom of expression allows the competition of ideas, the clash of claims and counterclaims, from which the truth will likely emerge. Freedom of expression allows the airing of social grievances, mitigating sudden eruptions of violence from marginalized groups who otherwise would not be heard by government. Freedom of expression provides a civilized way of engagement among political, ideological, religious or ethnic opponents for if one cannot use his tongue to argue, he might use his fist instead.

Freedom of expression is the freedom to disseminate ideas and beliefs, whether competing, conforming or otherwise. It is the freedom to express to others what one likes or dislikes, as it is the freedom of others to express to one and all what they favor or disfavor. It is the free expression for the ideas we love, as well as the free expression for the ideas we hate.[9] Indeed, the function of freedom of expression is to stir disputes:

> [I]t may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.[10]

Section 4, Article III of the Constitution prohibits the enactment of any law curtailing freedom of expression:

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[9] *See* dissenting opinion of Justice Oliver Wendell Holmes in *United States v. Schwimmer*, 279 U.S. 644 (1929).

[10] *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

No law shall be passed abridging the freedom of speech, of expression, or the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Thus, the rule is that expression is not subject to any ***prior restraint or censorship*** because the Constitution commands that freedom of expression shall not be abridged. Over time, however, courts have carved out narrow and well defined exceptions to this rule out of necessity.

The exceptions, ***when expression may be subject to prior restraint***, apply in this jurisdiction to ***only*** four categories of expression, namely: pornography,[11] false or misleading advertisement,[12] advocacy of imminent lawless action,[13] and danger to national security.[14] **All other expression is not subject to prior restraint**. As stated in *Turner Broadcasting System v. Federal Communication Commission*, "[T]he First Amendment (Free Speech Clause), subject only to narrow and well understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals."[15]

Expression not subject to prior restraint is ***protected expression*** or high-value expression. ***Any content-based prior restraint on protected expression is unconstitutional without exception***. A protected expression means what it says — it is absolutely protected from censorship. Thus, there can be no prior restraint on public debates on the amendment or repeal of existing laws,

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[11] *Gonzales v. Kalaw-Katigbak*, No. 69500, 22 July 1985, 137 SCRA 717.

[12] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Francisco T. Duque III*, G.R. No. 173034, 9 October 2007. Another fundamental ground for regulating false or misleading advertisement is Section 11(2), Article XVI of the Constitution which states: "The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare."

[13] *Eastern Broadcasting Corporation v. Dans*, No. 59329, 19 July 1985, 137 SCRA 628.

[14] *Id*.

[15] 512 U.S. 622, 640 (1994).

on the ratification of treaties, on the imposition of new tax measures, or on proposed amendments to the Constitution.

Prior restraint on expression is content-based if the restraint is aimed at the message or idea of the expression. Courts will subject to strict scrutiny content-based restraint. If the content-based prior restraint is directed at protected expression, courts will strike down the restraint as unconstitutional because there can be no content-based prior restraint on protected expression. The analysis thus turns on whether the prior restraint is content-based, and if so, whether such restraint is directed at protected expression, that is, those not falling under any of the recognized categories of unprotected expression.

If the prior restraint is not aimed at the message or idea of the expression, it is content-neutral even if it burdens expression. A content-neutral restraint is a restraint which regulates the time, place or manner of the expression in public places[16] without any restraint on the content of the expression. Courts will subject content-neutral restraints to intermediate scrutiny.[17]

An example of a content-neutral restraint is a permit specifying the date, time and route of a rally passing through busy public streets. A content-neutral prior restraint on protected expression which does not touch on the content of the expression enjoys the presumption of validity and is thus enforceable subject to appeal to the courts.[18] Courts will uphold time, place or manner restraints if they are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of expression.[19]

In content-neutral prior restraint on protected speech, there should be no prior restraint on the content of the expression

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[16] *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita,* G.R. Nos. 169838, 169848 and 156881, 25 April 2006, 488 SCRA 2260.

[17] *Constitutional Law*, Erwin Chemerinsky, pp. 902, 936 (2nd Edition).

[18] *Ruiz v. Gordon*, 211 Phil. 411 (1983).

[19] *United States v. Grace*, 461 U.S. 171 (1983).

itself. Thus, submission of movies or pre-taped television programs to a government review board is constitutional only if the review is for classification and not for censoring any part of the content of the submitted materials.[20] However, failure to submit such materials to the review board may be penalized without regard to the content of the materials.[21] The review board has no power to reject the airing of the submitted materials. The review board's power is only to classify the materials, whether for general patronage, for adults only, or for some other classification. The power to classify expressions applies only to movies and pre-taped television programs[22] but not to live television programs. Any classification of live television programs necessarily entails prior restraint on expression.

Expression that may be subject to prior restraint is ***unprotected expression*** or low-value expression. By definition, prior restraint on unprotected expression is content-based[23] since the restraint is imposed because of the content itself. In this jurisdiction, there are currently only four categories of unprotected expression that may be subject to prior restraint. This Court recognized false or misleading advertisement as unprotected expression only in October 2007.[24]

Only unprotected expression may be subject to prior restraint. However, any such prior restraint on unprotected expression must hurdle a high barrier. ***First***, such prior restraint is presumed

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[20] *Gonzalez v. Kalaw-Katigbak*, *see* Note 11. The Court declared, "It is the opinion of this Court, therefore, that to avoid an unconstitutional taint on its creation, ***the power of respondent Board is limited to the classification of films.***"

[21] *Movie and Television Review and Classification Board v. ABS-CBN Broadcasting Corporation*, G.R. No. 155282, 17 January 2005, 448 SCRA 5750.

[22] A case may be made that only television programs *akin* to motion pictures, like *tele-novelas*, are subject to the power of review and classification by a government review board, and such power cannot extend to other pre-taped programs like political shows.

[23] *Constitutional Law*, Chemerinsky, see Note 17, p. 903.

[24] *See* Note 12.

unconstitutional. ***Second***, the government bears a heavy burden of proving the constitutionality of the prior restraint.[25]

Courts will subject to strict scrutiny any government action imposing prior restraint on unprotected expression.[26] The government action will be sustained if there is a compelling State interest, and prior restraint is necessary to protect such State interest. In such a case, the prior restraint shall be ***narrowly drawn*** — only to the extent necessary to protect or attain the compelling State interest.

Prior restraint is a ***more severe*** restriction on freedom of expression than subsequent punishment. Although subsequent punishment also deters expression, still the ideas are disseminated to the public. Prior restraint prevents even the dissemination of ideas to the public.

While there can be no prior restraint on protected expression, such expression may be subject to subsequent punishment,[27] either civilly or criminally. Thus, the publication of election surveys cannot be subject to prior restraint,[28] but an aggrieved person can sue for redress of injury if the survey turns out to be fabricated. Also, while Article 201 (2)(b)(3) of the Revised Penal Code punishing "shows which offend any race or religion" cannot be used to justify prior restraint on religious expression, this provision can be invoked to justify subsequent punishment of the perpetrator of such offensive shows.[29]

Similarly, if the unprotected expression does not warrant prior restraint, the same expression may still be subject to subsequent punishment, civilly or criminally. Libel falls under this class of

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[25] *Iglesia ni Cristo (INC) v. Court of Appeals, Board of Review for Motion Pictures and Television*, G.R. No. 119673, 26 July 1996, 259 SCRA 529; *New York Times v. United States*, 403 U.S. 713 (1971).

[26] *Id*.

[27] *Ayer Productions Pty. Ltd. v. Capulong*, G.R. No. 82380, 29 April 1988, 160 SCRA 861.

[28] *Social Weather Station, et al. v. COMELEC*, 409 Phil. 571 (2001).

[29] *See* Note 25.

unprotected expression. However, if the expression cannot be subject to the lesser restriction of subsequent punishment, logically it cannot also be subject to the more severe restriction of prior restraint. Thus, since profane language or "hate speech" against a religious minority is not subject to subsequent punishment in this jurisdiction,[30] such expression cannot be subject to prior restraint.

If the unprotected expression warrants prior restraint, necessarily the same expression is subject to subsequent punishment. There must be a law punishing criminally the unprotected expression before prior restraint on such expression can be justified. The legislature must punish the unprotected expression because it creates a substantive evil that the State must prevent. Otherwise, there will be no legal basis for imposing a prior restraint on such expression.

The prevailing test in this jurisdiction to determine the constitutionality of government action imposing prior restraint on three categories of unprotected expression — pornography,[31] advocacy of imminent lawless action, and danger to national security — is the clear and present danger test.[32] The expression restrained must present a clear and present danger of bringing

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[30] *VRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, 444 Phil. 230 (2003). In effect, this makes "hate speech" against a religious or ethnic minority a protected expression.

[31] In pornography or obscenity cases, the ancillary test is the contemporary community standards test enunciated in *Roth v. United States* (354 U.S. 476 [1957]), which asks: whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. *See Gonzalez v. Kalaw-Katigbak*, Note 11.

[32] *See* notes 12 and 13. In false or misleading advertisement cases, no test was enunciated in *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary* (*see* Note 12) although the Concurring and Separate Opinion of Chief Justice Reynato S. Puno advocated the four-part analysis in *Central Hudson Gas & Electric v. Public Service Commission* (447 U.S. 557 [1980]), to wit: (1) the advertisement must concern lawful activity and not be misleading; (2) the asserted governmental interest must be substantial; (3) the state regulation directly advances the governmental interest asserted; and (4) the restriction is no more extensive than is necessary to serve that interest.

about a substantive evil that the State has a right and duty to prevent, and such danger must be grave and imminent.[33]

Prior restraint on unprotected expression takes many forms — it may be a law, administrative regulation, or impermissible pressures like threats of revoking licenses or withholding of benefits.[34] The impermissible pressures need not be embodied in a government agency regulation, but may emanate from policies, advisories or conduct of officials of government agencies.

3. Government Action in the Present Case

The government action in the present case is a ***warning by the NTC that the airing or broadcasting of the Garci Tapes by radio and television stations is a "cause for the suspension, revocation and/or cancellation of the licenses or authorizations***" issued to radio and television stations. The NTC warning, embodied in a press release, relies on two grounds. First, the airing of the Garci Tapes "is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to radio and TV stations." Second, the Garci Tapes have not been authenticated, and subsequent investigation may establish that the tapes contain false information or willful misrepresentation.

Specifically, the NTC press release contains the following categorical warning:

> Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC warns all radio stations and television networks owners/operators that the conditions of the authorizations and permits issued to them by Government

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[33] *Bayan v. Ermita, see* Note 16. In the United States, the prevailing test is the Brandenburg standard (*Brandenburg v. Ohio*, [395 U.S. 444 1969]) which refined the clear and present danger rule articulated by Justice Oliver Wendell Holmes in *Schenck v. United States* (249 U.S. 47 [1919]) by limiting its application to expressions where there is "imminent lawless action." See *American Constitutional Law*, Otis H. Stephen, Jr. and John M. Scheb II, Vol. II, p. 133 (4th Edition).

[34] *Federal Communications Commission v. League of Women Voters*, 468 U.S. 364 (1984).

like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use its stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the Commission that certain personalities are in possession of alleged taped conversation which they claim, (sic) involve the President of the Philippines and a Commissioner of the COMELEC regarding their supposed violation of election laws. These personalities have admitted that the taped conversations are product of illegal wiretapping operations.

Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, (sic) **it is the position of the Commission that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations**. **If it has been (sic) subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies**. (Boldfacing and underscoring supplied)

The NTC does not claim that the public airing of the Garci Tapes constitutes unprotected expression that may be subject to prior restraint. The NTC does not specify what substantive evil the State seeks to prevent in imposing prior restraint on the airing of the Garci Tapes. The NTC does not claim that the public airing of the Garci Tapes constitutes a clear and present danger of a substantive evil, of grave and imminent character, that the State has a right and duty to prevent.

The NTC did not conduct any hearing in reaching its conclusion that the airing of the Garci Tapes constitutes a continuing violation of the Anti-Wiretapping Law. At the time of issuance of the NTC press release, and even up to now, the parties to the conversations in the Garci Tapes have not complained that the

wire-tapping was without their consent, an essential element for violation of the Anti-Wiretapping Law.[35] It was even the Office of the President, through the Press Secretary, that played and released to media the Garci Tapes containing the alleged "spliced" conversation between President Arroyo and Commissioner Garcillano. There is also the issue of whether a *wireless* cellular phone conversation is covered by the Anti-*Wiretapping* Law.

Clearly, the NTC has no factual or legal basis in claiming that the airing of the Garci Tapes constitutes a violation of the Anti-Wiretapping Law. The radio and television stations were not even given an opportunity to be heard by the NTC. The NTC did not observe basic due process as mandated in *Ang Tibay v. Court of Industrial Relations*.[36]

The NTC claims that the Garci Tapes, "after a prosecution or the appropriate investigation," may constitute "false information and/or willful misrepresentation." However, the NTC does not claim that such possible false information or willful misrepresentation constitutes misleading commercial advertisement. In the United States, false or deceptive commercial speech is categorized as unprotected expression that may be subject to prior restraint. Recently, this Court upheld the constitutionality of Section 6 of the Milk Code requiring the submission to a government screening committee of advertising materials for infant formula milk to prevent false or deceptive claims to the public.[37] There is, however, no claim here by respondents that the Garci Tapes constitute false or misleading commercial advertisement.

The NTC concedes that the Garci Tapes have not been authenticated as accurate or truthful. The NTC also concedes that only "after a prosecution or appropriate investigation" can it be established that the Garci Tapes constitute "false information and/or willful misrepresentation." ***Clearly, the NTC admits that it does not even know if the Garci Tapes contain false information or willful misrepresentation***.

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[35] Section 1, Republic Act No. 4200.

[36] 69 Phil. 635 (1940).

[37] *See* Note 12.

4. Nature of Prior Restraint in the Present Case

The NTC action restraining the airing of the Garci Tapes is a content-based prior restraint because it is directed at the message of the Garci Tapes. The NTC's claim that the Garci Tapes might contain "false information and/or willful misrepresentation," and thus should not be publicly aired, is an *admission* that the restraint is content-based.

5. Nature of Expression in the Present Case

The public airing of the Garci Tapes is a **protected expression** because it does not fall under any of the four existing categories of unprotected expression recognized in this jurisdiction. The airing of the Garci Tapes is essentially a political expression because it exposes that a presidential candidate had allegedly improper conversations with a COMELEC Commissioner right after the close of voting in the last presidential elections.

Obviously, the content of the Garci Tapes **affects gravely the sanctity of the ballot.** Public discussion on the sanctity of the ballot is indisputably a protected expression that cannot be subject to prior restraint. Public discussion on the credibility of the electoral process is one of the highest political expressions of any electorate, and thus deserves the utmost protection. If ever there is a hierarchy of protected expressions, political expression would occupy the highest rank,[38] and among different kinds of political expression, the subject of fair and honest elections would be at the top. In any event, public discussion on all political issues should always remain uninhibited, robust and wide open.

The rule, which recognizes no exception, is that there can be no content-based prior restraint on protected expression. On this ground alone, the NTC press release is unconstitutional. Of course, if the courts determine that the subject matter of a wiretapping, illegal or not, endangers the security of the State,

[38] Some commentators, including Prof. Robert Bork, argue that political expression is the only expression protected by the Free Speech Clause. The U.S. Supreme Court has rejected this view. *Constitutional Law*, Chemerinsky, *see* Note 17, p. 897.

the public airing of the tape becomes unprotected expression that may be subject to prior restraint. However, there is no claim here by respondents that the subject matter of the Garci Tapes involves national security and publicly airing the tapes would endanger the security of the State.[39]

The alleged violation of the Anti-Wiretapping Law is not in itself a ground to impose a prior restraint on the airing of the Garci Tapes because the Constitution expressly prohibits the enactment of any law, and that includes anti-wiretapping laws, curtailing freedom of expression.[40] The only exceptions to this rule are the four recognized categories of unprotected expression. However, the content of the Garci Tapes does not fall under any of these categories of unprotected expression.

The airing of the Garci Tapes does not violate the right to privacy because the content of the Garci Tapes is a matter of important public concern. The Constitution guarantees the people's right to information on matters of public concern.[41] The remedy of any person aggrieved by the public airing of the Garci Tapes is to file a complaint for violation of the Anti-Wiretapping Law *after* the commission of the crime. Subsequent punishment, *absent a lawful defense,* is the remedy available in case of violation of the Anti-Wiretapping Law.

The present case involves a prior restraint on protected expression. Prior restraint on protected expression differs significantly from subsequent punishment of protected expression. While there can be no prior restraint on protected expression, there can be subsequent punishment for protected expression under libel, tort or other laws. In the present case, the NTC action seeks prior restraint on the airing of the Garci Tapes,

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[39] *See* Commonwealth Act No. 616 and Article 117 of the Revised Penal Code.

[40] See *Bartnicki v. Vopper*, 532 U.S. 514 (2001). In this case, the U.S. Supreme Court held that an anti-wiretapping law violates the First Amendment if it prohibits disclosure of intercepted information that is of significant public concern.

[41] Section 7, Article III, Constitution.

not punishment of personnel of radio and television stations for actual violation of the Anti-Wiretapping Law.

6. Only the Courts May Impose Content-Based Prior Restraint

The NTC has no power to impose content-based prior restraint on expression. The charter of the NTC does not vest NTC with any content-based censorship power over radio and television stations.

In the present case, the airing of the Garci Tapes is a protected expression that can never be subject to prior restraint. However, even assuming for the sake of argument that the airing of the Garci Tapes constitutes unprotected expression, only the courts have the power to adjudicate on the factual and legal issue of whether the airing of the Garci Tapes presents a clear and present danger of bringing about a substantive evil that the State has a right and duty to prevent, so as to justify the prior restraint.

Any order imposing prior restraint on ***unprotected expression*** requires prior adjudication by the courts on whether the prior restraint is constitutional. This is a necessary consequence from the presumption of invalidity of any prior restraint on unprotected expression. Unless ruled by the courts as a valid prior restraint, government agencies cannot implement outright such prior restraint because such restraint is presumed unconstitutional at inception.

As an agency that allocates frequencies or airwaves, the NTC may regulate the bandwidth position, transmitter wattage, and location of radio and television stations, but not the content of the broadcasts. Such content-neutral prior restraint may make operating radio and television stations more costly. However, such content-neutral restraint does not restrict the content of the broadcast.

7. Government Failed to Overcome Presumption of Invalidity

Assuming that the airing of the Garci Tapes constitutes unprotected expression, the NTC action imposing prior restraint on the airing is presumed unconstitutional. The Government

bears a heavy burden to prove that the NTC action is constitutional. The Government has failed to meet this burden.

In their Comment, respondents did not invoke any compelling State interest to impose prior restraint on the public airing of the Garci Tapes. The respondents claim that they merely "fairly warned" radio and television stations to observe the Anti-Wiretapping Law and pertinent NTC circulars on program standards. Respondents have not explained how and why the observance by radio and television stations of the Anti-Wiretapping Law and pertinent NTC circulars constitutes a compelling State interest justifying prior restraint on the public airing of the Garci Tapes.

Violation of the Anti-Wiretapping Law, like the violation of any criminal statute, can always be subject to criminal prosecution *after* the violation is committed. Respondents have not explained why there is a need in the present case to impose prior restraint just to prevent a possible future violation of the Anti-Wiretapping Law. Respondents have not explained how the violation of the Anti-Wiretapping Law, or of the pertinent NTC circulars, can incite imminent lawless behavior or endanger the security of the State. To allow such restraint is to allow prior restraint on all future broadcasts that may possibly violate any of the existing criminal statutes. That would be the dawn of sweeping and endless censorship on broadcast media.

8. The NTC Warning is a Classic Form of Prior Restraint

The NTC press release threatening to suspend or cancel the airwave permits of radio and television stations constitutes impermissible pressure amounting to prior restraint on protected expression. Whether the threat is made in an order, regulation, advisory or press release, the chilling effect is the same: the threat freezes radio and television stations into deafening silence. Radio and television stations that have invested substantial sums in capital equipment and market development suddenly face suspension or cancellation of their permits. The NTC threat is thus real and potent.

In *Burgos v. Chief of Staff*,[42] this Court ruled that the closure of the *We Forum* newspapers under a general warrant "is in the nature of a previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law." The NTC warning to radio and television stations not to air the Garci Tapes or else their permits will be suspended or cancelled has the same effect — a prior restraint on constitutionally protected expression.

In the recent case of *David v. Macapagal-Arroyo*,[43] this Court declared unconstitutional government threats to close down mass media establishments that refused to comply with government prescribed "standards" on news reporting following the declaration of a State of National Emergency by President Arroyo on 24 February 2006. The Court described these threats in this manner:

> Thereafter, **a wave of warning[s] came from government officials**. Presidential Chief of Staff Michael Defensor was quoted as saying that such raid was "meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government." Director General Lomibao further stated that "if they do not follow the standards — and the standards are if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 — we will recommend a 'takeover.'" **National Telecommunications Commissioner Ronald Solis urged television and radio networks to "cooperate" with the government for the duration of the state of national emergency. He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage during times when the national security is threatened**.[44] (Emphasis supplied)

The Court struck down this "**wave of warning[s]**" as impermissible restraint on freedom of expression. The Court

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[41] Section 7, Article III, Constitution.

[42] 218 Phil. 754 (1984).

[43] *See* Note 7.

[44] *Id*. at 268.

ruled that "the imposition of standards on media or any form of prior restraint on the press, as well as the warrantless search of the Tribune offices and whimsical seizure of its articles for publication and other materials, are declared UNCONSTITUTIONAL."[45]

The history of press freedom has been a constant struggle against the censor whose weapon is the suspension or cancellation of licenses to publish or broadcast. The NTC warning resurrects the weapon of the censor. The NTC warning is a ***classic form of prior restraint*** on protected expression, which in the words of *Near v. Minnesota* is "the essence of censorship."[46] Long before the American Declaration of Independence in 1776, William Blackstone had already written in his *Commentaries on the Law of England*, "The liberty of the press x x x consists in laying no previous restraints upon publication x x x."[47]

Although couched in a press release and not in an administrative regulation, the NTC threat to suspend or cancel permits remains real and effective, for without airwaves or frequencies, radio and television stations will fall silent and die. The NTC press release does not seek to advance a legitimate regulatory objective, but to suppress through coercion information on a matter of vital public concern.

9. Conclusion

In sum, the NTC press release constitutes an unconstitutional prior restraint on protected expression. There can be no content-based prior restraint on protected expression. This rule has no exception.

I therefore vote to (1) grant the petition, (2) declare the NTC warning, embodied in its press release dated 11 June 2005, an unconstitutional prior restraint on protected expression, and (3) enjoin the NTC from enforcing the same.

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[45] *Id.* at 275.

[46] 283 U.S. 697 (1931).

[47] *American Constitutional Law*, Ralph A. Rossum and G. Alan Tass, Vol. II, p. 183 (7th Edition).

SEPARATE CONCURRING OPINION

AZCUNA, *J.*:

I vote to GRANT the petition on the grount that the challenged NTC and DOJ warnings violate Sec. 10, Art. XVI of the Constitution which states:

> Sec. 10. The State shall provide the policy environment for the full development of Filipino capability and the emergency of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.

This privision was precisely crafted to meet the needs and opportunities of the emerging new pathways of communication, from radio and tv broadcast to the flow of digital information via cables, satellites and the internet.

The purpose of this new statement of directed State policy is to hold the State responsible for a policy environment that provides for (1) the full development of Filipino capability, (2) the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information, and (3) respect for the freedom of speech and of the press.

The regulatory warnings involved in this case work against a balanced flow of informaton in our communication structures and do so without respecting freedom of speech by casting a chilling effect on the media. This is definitely not the policy environment contemplated by the Constitution.

SEPARATE OPINION

CHICO-NAZARIO, *J.*:

With all due respect, I vote to dismiss the present Petition for the simple reason that the assailed press statements made by the National Telecommunications Commission (NTC) and the Secretary of Justice Raul Gonzales (Gonzales) do not

constitute prior restraint that impair freedom of speech. There being no restraint on free speech, then there is even no need to apply any of the tests, *i.e.*, the dangerous tendency doctrine, the balancing of interests test, and the clear and present danger rule, to determine whether such restraint is valid.

The assailed press statements must be understood and interpreted in the proper perspective. The statements must be read in their entirety, and interpreted in the context in which they were made.

A scrutiny of the "fair warning" issued by the NTC on 11 June 2005 reveals that it is nothing more than that, a fair warning, calling for sobriety, care, and circumspection in the news reporting and current affairs coverage by radio and television stations. It reminded the owners and operators of the radio stations and television networks of the provisions in NTC Memorandum Circulars No. 11-12-85 and 22-89, which are also stated in the authorizations and permits granted to them by the government, that they shall not use their stations for the broadcasting or telecasting of false information or willful misrepresentation. It must be emphasized that the NTC is merely reiterating the very same prohibition **already contained** in its previous circulars, and even in the authorizations and permits of radio and television stations. The reason thus escapes me as to why said prohibition, when it was stated in the NTC Memorandum Circulars and in the authorizations and permits, was valid and acceptable, but when it was **reiterated** in a mere **press statement** released by the NTC, had become a violation of the Constitution as a prior restraint on free speech.

In the midst of the media frenzy that surrounded the Garci tapes, the NTC, as the administrative body tasked with the regulation of radio and television broadcasting companies, cautioned against the airing of the **unauthenticated** tapes. The warning of the NTC was expressed in the following manner, "[i]f it has been (sic) subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false

information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies." According to the foregoing sentence, **before any penalty could be imposed on a radio or television company for airing the Garci tapes, the tapes must have been established to be false and fraudulent after prosecution and investigation**. The warning is nothing new for it only verbalizes and applies to the particular situation at hand an existing prohibition against spreading false information or willful misrepresentation by broadcast companies. In fact, even without the contested "fair warning" issued by the NTC, broadcast companies could still face penalties if, after investigation and prosecution, the Garci tapes are established to be false and fraudulent, and the airing thereof was done to purposely spread false information or misrepresentation, in violation of the prohibition stated in the companies' authorizations and permits, as well as the pertinent NTC Memorandum Circulars.

Moreover, we should not lose sight of the fact that just three days after its issuance of its "fair warning," or on 14 June 2005, the NTC again released another press statement, this time, jointly made with the *Kapisanan ng Broadcasters sa Pilipinas* (KBP), to the effect that:

JOINT PRESS STATEMENT: NTC AND KBP

- CALL FOR SOBRIETY, RESPONSIBLE JOURNALISM, AND OBSERVANCE OF LAW, AND THE RADIO AND TELEVISION CODES.
- NTC RESPECTS AND WILL NOT HINDER FREEDOM OF THE PRESS AND THE RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN. KBP & ITS MEMBERS HAVE ALWAYS BEEN COMMITTED TO THE EXERCISE (sic) PRESS FREEDOM WITH HIGH SENSE OF RESPONSIBILITY AND DISCERNING JUDGMENT OF FAIRNESS AND HONESTY.
- NTC DID NOT ISSUE ANY MC OR ORDER CONSTITUTING A RESTRAINT OF PRESS FREEDOM OR CENSORSHIP. NTC FURTHER DENIES AND DOES NOT INTEND TO LIMIT OR RESTRICT THE INTERVIEW OF

MEMBERS OF THE OPPOSITION OR FREE EXPRESSION OF VIEWS.

- WHAT IS BEING ASKED BY NTC IS THAT THE EXERCISE OF PRESS FREEDOM IS DONE RESPONSIBLY.
- KBP HAS PROGRAM STANDARDS THAT KBP MEMBERS WILL OBSERVE IN THE TREATMENT OF NEWS AND PUBLIC AFFAIRS PROGRAMS. THESE INCLUDE VERIFICATION OF SOURCES, NON-AIRING OF MATERIALS THAT WOULD CONSTITUTE INCITING TO SEDITION AND/OR REBELLION.
- THE KBP CODES ALSO REQUIRE THAT NO FALSE STATEMENT OR WILLFUL MISREPRESENTATION IS MADE IN THE TREATMENT OF NEWS OR COMMENTARIES.
- THE SUPPOSED WIRETAPPED (sic) TAPES SHOULD BE TREATED WITH SENSITIVITY AND HANDLED RESPONSIBLY GIVING DUE CONSIDERATION TO THE PROCESSES BEING UNDERTAKEN TO VERIFY AND VALIDATE THE AUTHENTICITY AND ACTUAL CONTENT OF THE SAME.

The relevance of the afore-quoted press statement cannot be downplayed. It already categorically settles what NTC meant and how the KBP understood the 11 June 2005 NTC press statement. We cannot insist to give a different and more sinister interpretation to the first press statement, when the second press statement had already particularly defined the context by which it should be read.

Neither should we give much merit to the statements made by Secretary Gonzales to the media that he had already instructed the National Bureau of Investigation (NBI) to monitor all radio stations and television networks for possible violations of the Anti-Wiretapping Law. Secretary Gonzales is one of media's favorite political personalities, hounded by reporters, and featured almost daily in newspapers, radios, and televisions, for his "quotable quotes," some of which appeared to have been uttered spontaneously and flippantly. There was no showing that Secretary Gonzales had actually and officially ordered the NBI to conduct

said monitoring of radio and television broadcasts, and that the NBI acted in accordance with said order. Which leads me to my next point.

We should be judicious in giving too much weight and credence to press statements. I believe that it would be a dangerous precedent to rule that press statements should be deemed an official act of the administrative agency or public official concerned. Press statements, in general, can be easily manufactured, prone to alteration or misinterpretation as they are being reported by the media, and may, during some instances, have to be made on the spot without giving the source much time to discern the ramifications of his statements. Hence, they cannot be given the same weight and binding effect of official acts in the form of, say, memorandum orders or circulars.

Even if we assume *arguendo* that the press statements are official issuances of the NTC and Secretary Gonzales, then the petitioner alleging their unconstitutionality must bear the burden of proving first that the challenged press statements did indeed constitute prior restraint, before the presumption of invalidity of any system of prior restraint on free speech could arise. Until and unless the petitioner satisfactorily discharges the said burden of proof, then the press statements must similarly enjoy the presumption of validity and constitutionality accorded to statutes, having been issued by officials of the executive branch, a co-equal. The NTC and Secretary Gonzales must likewise be accorded the presumption that they issued the questioned press statements in the regular performance of their duties as the regulatory body for the broadcasting industry and the head of the principal law agency of the government, respectively.

Significantly also, please allow me to observe that the purported chilling effect of the assailed press statements was belied by the fact that the owners and operators of radio stations and television networks, who were supposed to feel most threatened by the same, did not find it necessary to go to court. They should have been the ones to have felt and attested to the purported chilling effect of said press statements. Their silence in all this speaks for itself.

In view of the foregoing, I vote for the denial of the present petition.

CONCURRING AND DISSENTING OPINIONS

VELASCO, JR., *J.*:

I concur in the results of the majority opinion penned by Chief Justice Puno, but only insofar as the NTC aspect of the case is concerned.

The opinion of the Chief Justice — upon which this concurrence hinges — is to the effect that the warning issued by the NTC, by way of a press release, that the continuous airing or broadcast of the "Garci Tapes" is a violation of the Anti-Wiretapping Law, restricts the freedom of speech and of the press and constitutes a content-based prior restraint impermissible under the Constitution. The quality of impermissibility comes in owing to the convergence and combined effects of the following postulates, to wit: the warning was issued at the time when the "Garci Tapes" was newspaper headline and radio/TV primetime material; it was given by the agency empowered to issue, suspend, or altogether cancel the certificate of authority of owners or operators of radio or broadcast media; the chilling effect the warning has on media owners, operators, or practitioners; and facts are obtaining casting doubt on the proposition that airing the controversial tape would violate the anti-wiretapping law.

I also agree with the Chief Justice's observation that the prior restraining warning need not be embodied in a formal order or circular, it being sufficient that such warning was made by a government agency, NTC in this case, in the performance of its official duties. Press releases on a certain subject can rightfully be treated as statements of official position or policy, as the case may be, on such subject.

To me, the facts on record are sufficient to support a conclusion that the press release issued by NTC — with all the unmistakable threat embodied in it of a possible cancellation of licenses and/

or the filing of criminal cases against erring media owners and practitioners — constitutes a clear instance of prior restraint. Not lost on this writer is the fact that five (5) days after it made the press release in question, NTC proceeded to issue jointly with the Kapisanan ng mga Broadcasters sa Pilipinas (KBP) another press release to clarify that the earlier one issued was not intended to limit or restrain press freedom. With the view I take of the situation, the very fact that the KBP agreed to come up with the joint press statement that "NTC did not issue any [Memorandum Circular] or order constituting a restraint of press freedom or censorship" tends to prove, rather than disprove, the threatening and chilling tone of its June 11, 2005 press release. If there was no prior restraint from the point of view of media, why was there a need to hold a dialogue with KBP and then issue a clarifying joint statement?

Moreover, the fact that media owners, operators, and practitioners appeared to have been frozen into inaction, not making any visible effort to challenge the validity of the NTC press statement, or at least join the petitioner in his battle for press freedom, can only lead to the conclusion that the chilling effect of the statement left them threatened.

The full ventilation of the issues in an oral argument would have been ideal, particularly so since TV and radio operators and owners opted not to intervene nor were asked to give their comment on the chilling effect of the NTC press statement. Nonetheless, I find the admissions in the pleadings and the attachments thereto to be more than sufficient to judiciously resolve this particular issue. The contents of the June 11, 2005 press release eloquently spoke for themselves. The NTC "warning" is in reality a threat to TV and radio station owners and operators not to air or broadcast the "Garci Tapes" in any of their programs. The four corners of the NTC's press statement unequivocally reveal that the "Garci Tapes" may not be authentic as they have yet to be duly authenticated. It is a statement of fact upon which the regulatory body predicated its warning that its airing or broadcast will constitute false or misleading dissemination of information that could result in the suspension or cancellation of their respective licenses or franchises. The press statement

was more than a mere notice of a possible suspension. Its crafting and thrust made it more of a threat — a declaration by the regulatory body that the operators or owners should not air or broadcast the tapes. Otherwise, the menacing portion on suspension or cancellation of their franchises to operate TV/radio station will be implemented. Indeed, the very press statement speaks eloquently on the chilling effect on media. One has to consider likewise the fact that the warning was not made in an official NTC circular but in a press statement. The press statement was calculated to immediately inform the affected sectors, unlike the warning done in a circular which may not reach the intended recipients as fast.

In all, the NTC statement coupled with other circumstances convince this writer that there was indeed a chilling effect on the TV/radio owners, in particular, and media, in general.

While the Court has several pieces of evidence to fall back on and judiciously resolve the NTC press release issue, the situation is different with respect to the Department of Justice (DOJ) warning issue. What is at hand are mere allegations in the petition that, on June 8, 2005, respondent DOJ Secretary Raul Gonzales warned reporters in possession of copies of the compact disc containing the alleged "Garci" wiretapped conversation and those broadcasting or publishing its contents that they could be held liable under the Anti-Wiretapping Act, adding that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge of the crime committed or in whose presence the crime was being committed.[1]

There was no proof at all of the possible chilling effect that the alleged statements of DOJ Secretary Gonzales had on the reporters and media practitioners. The DOJ Secretary, as head of the prosecution arm of the government and lead administrator of the criminal justice system under the Administrative Code[2] is, to be sure, impliedly empowered to issue reminders and

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[1] *Rollo*, pp. 8-9 & 59.

[2] Sec. 1, Chapter I, Title III of Book IV.

warnings against violations of penal statutes. And it is a known fact that Secretary Gonzales had issued, and still issues, such kind of warnings. Whether or not he exceeded his mandate under premises is unclear. It is for this main reason that I found the prior-restraint issue in the DOJ aspect of the case not yet ripe for adjudication.

I, therefore, register my concurrence with the *ponencia* of Chief Justice Reynato S. Puno insofar as it nullifies the official statement made by respondent NTC on June 11, 2005, but dissent, with regrets, with respect to the nullification of the June 8, 2005 official statement of respondent Secretary of Justice.

SEPARATE OPINION (DISSENTING AND CONCURRING)

TINGA, *J.*:

This case, involving as it does the perennial clash between fundamental individual freedoms and state power, confronts the Court with a delicate and difficult balancing task.

With all due respect, the petition, with a little more forbearance, could have been conduced to a denouement of congruity but without diminishing the level of scrutiny that the crucial stakes demand. I trust though that future iterations of this Court, more divorced from some irrational aspects of the passions of these times, will further refine the important doctrines laid down today.

Several considerations guide my vote to grant the petition — to issue the quested writ against the respondent Department of Justice Secretary Raul M. Gonzalez (DOJ Secretary), but not as to respondent National Telecommunications Commission (NTC).

I.

I begin with some observations on the petition itself filed by former Solicitor General Francisco Chavez, brought forth in his capacity "as a citizen, taxpayer and a law practitioner" against the DOJ Secretary and the NTC. At a crucial point during the

deliberations on this case, much of the focus within the Court was on the aspect of the case concerning the NTC, to the exclusion of the aspect concerning the DOJ Secretary. However, the petition itself only minimally dwells on the powers of the National Telecommunications Commission (NTC).

The petition was filed on 21 June 2005, less than a month after the so-called *Hello Garci* tapes (*Garci* tapes) hit the newstands. The petition narrates that a few days after reports on the *Garci* tapes became public, respondent DOJ Secretary "threatened that everyone found to be in possession of the controversial audio tape, as well as those broadcasting it or printing its contents, were liable for violation of the Anti-Wiretapping Law,"[1] and subsequently he ordered the National Bureau of Investigation (NBI) "to go after media organizations found to have caused the spread, the playing and the printing of the contents" of the said tape.

Then, a Press Release was issued by respondent NTC, essentially warning broadcast stations, "[i]f it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation . . .[,] that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies."[2] These essentially are the antecedent facts raised in the petition.

Petitioner presents two general arguments for our determination: that respondents violated the constitutional provisions on the freedom of expression and of the press,[3] and of the right of the people to information on matters of public concern;[4] and that the NTC acted beyond its powers as a regulatory body when it warned

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[1] *Rollo*, p. 8.

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

[3] CONST., Art. III, Sec. 4.

[4] CONST., Art. III, Sec. 7. The Decision however has properly refused to dwell on the right to information as central to the case at bar. See Decision, p. 9.

broadcast stations of consequences if they continued to air the contents of the disputed tapes.[5]

Fifteen (15) pages are assigned to the first issue, while four (4) pages are allotted to the second issue concerning the NTC. In the context of arguing that there had been prior restraint, petitioner manifests that "the threat of crackdown on media and the public were calculated to sow fear and terror in advance of actual publication and dissemination of the contents of the controversial tapes."[6] Because of such "fear and terror," the public was denied free access to information as guaranteed by the Constitution.[7]

Only four (4) pages are devoted to whether the NTC exceeded its discretion when it issued the Press Release. About two (2) of the four (4) pages are utilized to cite the statutory provisions delineating the powers and functions of the NTC. The citations are geared toward the claim that "NTC is independent in so far as its regulatory and quasi-judicial functions are concerned."[8] Then the petition argues that nothing in the functions of the NTC "warrants the pre-emptive action it took on June 11, 2005 of declaring in a Press Release that airing of the contents of the controversial tape already constituted a violation of the Anti-Wire Tapping Law."[9] The petition also states that "[w]orse, the judgment of NTC was outright, without a hearing to determine the alleged commission of a crime and violation of the certificate of authority issued to radio and television stations,"[10] though this point is neither followed up nor bolstered by appropriate citations which should be plenty.

One relevant point of fact is raised in the Comment filed by the Office of the Solicitor General (OSG) in behalf of respondents.

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[5] *Rollo*, p. 18.

[6] *Id*. at 23.

[7] *Id*. at 24.

[8] *Rollo*, p. 34.

[9] *Id*. at 34.

[10] *Id*. at 37.

Three (3) days after the issuance of the Press Release, the NTC and the *Kapisanan ng mga Brodkaster sa Pilipinas* (KBP) issued a Joint Statement crafted after a dialogue between them. The Joint Statement declares:

> 2. NTC respects and will not hinder freedom of the press and the right to information on matters of public concern. KBP & its members have always been committed to the exercise of press freedom with high sense of responsibility and discerning judgment of fairness and honesty.
>
> 3. NTC did not issue any Memorandum Circular or Order constituting a restraint of press freedom or censorship. The NTC further denies and does not intend to limit or restrict the interview of members of the opposition or free expression of views.
>
> 4. What is being asked by NTC is that the exercise of press freedom be done responsibly.[11]

II.

Based on the petition, the determinative questions appear to be: (1) whether the DOJ Secretary may be enjoined from prosecuting or threatening to prosecute any person for possessing or broadcasting the contents of the *Garci* tapes, an act which allegedly violates the free expression clause if not also the right to information clause; and (2) whether the NTC may be enjoined from sanctioning or threatening to sanction any broadcast media outlet for broadcasting the *Garci* tapes, an action also alleged to infringe the aforementioned constitutional rights.

It should be stressed that there are critical differences between the factual and legal milieu of the assailed act of the DOJ Secretary, on one hand, and that of the questioned conduct of the NTC, on the other. The act complained of the NTC consists in the issuance of a Press Release, while that of the DOJ Secretary is not encapsulated in a piece of paper but comprised in utterances which nonetheless were well documented by the news reports at that time. There is an element of caution raised in the Press Release in that it does not precisely sanction or threaten to

[11] *Id.* at 111.

immediately sanction the broadcast media for airing the *Garci* tapes, but it raises that possibility on the condition that "it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation." No such suspensive condition is embodied in the assailed acts of the DOJ Secretary.

And most critical in my view is the distinction between the NTC and the DOJ Secretary with respect to the breadth and reach of their ability to infringe upon the right to free expression. The NTC is a quasi-judicial regulatory body attached to the Department of Transportation and Communications exercising regulatory jurisdiction over a limited set of subjects: the broadcast media, telecommunications companies, *etc*. In the scope of its regulatory jurisdiction, it concededly has some capacity to impose sanctions or otherwise perform acts that could impinge on the right of its subjects of regulation to free expression, although the precise parameters of its legal authority to exercise such actions have not yet been fully defined by this Court.

In contrast, the ability of the DOJ Secretary and the office that he heads to infringe on the right to free expression is quite capacious. Unlike the NTC whose power of injunction and sanction is limited to its subjects of regulation, the DOJ Secretary heads the department of government which has the premier faculty to initiate and litigate the prosecution of just about anybody.

III.

It should be assumed without controversy that the *Garci* tapes fall within the protection of the free expression clause.

Much has been said in homage to the right to free expression. It is precisely the underlying reason I can write this submission, and the reader can read this opinion or any news account concerning the decision and its various separate opinions. The revolutions we celebrate in our history books were animated in part by an insistence that this right should be recognized as integral.[12] The right inheres

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[12] "Freedom of expression was a concept unknown to Philippine jurisprudence prior to 1900. It was one of the burning issues during the Filipino

in the first yawl of the newborn infant, and allows a person to speak honestly in the throes of death.

In 20th century American jurisprudence, the right to free speech and expression has been rightly linked to the inalienable right to liberty under the due process clause.[13] Indeed, liberty cannot be actualized unless it encompasses liberty of speech and expression. As a consequence, the same methodology as applied to due process and equal protection cases may hold as well to free expression cases.

In my view, the operative principles that should govern the adjudication of free expression cases are uncomplicated. The infringement on the right by the State can take the mode of a content-based regulation or a content-neutral regulation. With respect to content-based regulations, the only expressions that may be proscribed or punished are the traditionally recognized unprotected expressions — those that are obscene, pose danger to national security or incite imminent lawless action, or are defamatory.[14] In order that such unprotected expressions may

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campaign against Spain, first, in the writings of the Filipino propagandists, and, finally, in the armed revolt against the mother country. Spain's refusal to recognize the right was, in fact, a prime cause of the revolution." J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (1996 ed.), at 203-204.

[13] Beginning with *Gitlow v. New York*, 268 U.S. 652 (1925). "For present purposes we may and do assume that freedom of speech and of the press – which are protected by the First Amendment from abridgment by Congress – are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." *Id*. at 666. "The incorporation of the other First Amendment rights followed. In 1931, the Supreme Court held squarely that the freedom of the press is within the protection of the 'liberty' guaranteed in the Fourteenth Amendment (*Near v. Minnesota*, [283 U.S. 697 (1931)]); in 1937 the right of peaceable assembly was included (*DeJonge v. Oregon*, 299 U.S. 353); and in 1940 the freedom-of-religion provision was used to invalidate a Connecticut statute requiring a permit for all solicitors for religious and charitable causes (*Cantwell v. Connecticut*, [310 U.S. 296 (1940)])" A.T Mason & W. Beaney, *American Constitutional Law* (4th ed.), at 496-497.

[14] The views of this writer on the proper interpretation of our libel laws in light of Section 4, Article III of the Constitution were expressed in *Guingging v. Court of Appeals*, G.R. No. 128959, 30 September 2005, 471 SCRA 516.

be restrained, it must be demonstrated that they pose a clear and present danger of bringing about a substantive evil that the State has a right and duty to prevent, such danger being grave and imminent as well. But as to all other protected expressions, there can be no content-based regulation at all. No prior restraint, no subsequent punishment.

For as long as the expression is not libelous or slanderous, not obscene, or otherwise not dangerous to the immediate well-being of the State and of any other's, it is guaranteed protection by the Constitution. I do not find it material whether the protected expression is of a political, religious, personal, humorous or trivial nature — they all find equal comfort in the Constitution. Neither should it matter through what medium the expression is conveyed, whether through the print or broadcast media, through the Internet or through interpretative dance. For as long as it does not fall under the above-mentioned exceptions, it is accorded the same degree of protection by the Constitution.

Still concerning the protection afforded to the tapes, I do take issue with Justice Carpio's view that "[t]he airing of the Garci tapes is essentially a political expression because it exposes that a presidential candidate had allegedly improper conversations with a COMELEC Commissioner . . ." and that the contents of the tapes "affect gravely the sanctity of the ballot."[15] These statements are oriented towards the conclusion that "[i]f ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression, the subject of fair and honest elections would be at the top."[16] Yet even the majority opinion acknowledges that "the integrity of the taped conversation is also suspect . . ." and "[t]he identity of the wire-tappers, the manner of its commission, and other related and relevant proofs are some of the invisibles of this case . . . given all these unsettled facets of the tape, it is even arguable whether its airing would violate the anti-wiretapping law."[17]

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[15] Separate Concurring Opinion of Justice Carpio, p. 16.

[16] *Id*.

[17] Decision, p. 34.

To be blunt, it would be downright pretentious for the Court to attribute to the tapes any definitive character, political or otherwise, because there is simply no basis for us to make such conclusion at this point. But even if they are not of a political character, they nonetheless find protection under the free expression clause.

IV.

Given the constitutionally protected character of the tapes, it still falls upon the petition to establish that there was an actual infringement of the right to expression by the two denominated respondents — the DOJ Secretary and the NTC — in order that the reliefs sought may avail. There are two distinct (though not necessarily exclusive) means by which the infringement can be committed by either or both of the respondents — through prior restraint or through an act that creates a chilling effect on the exercise of such right.

I turn first to the assailed acts of the NTC.

It is evident from the Decision and the concurring opinion of Justice Carpio that they give primary consideration to the aspect relating to the NTC, notwithstanding the relative lack of attention devoted by the petition to that issue. The impression they leave thus is that the assailed acts of the NTC were somehow more egregious than those of the DOJ Secretary. Worse, both the Decision and the concurring opinion reach certain conclusions on the nature of the Press Release which are, with due respect, untenable.

IV-A.

As a means of nullifying the Press Release, the document has been characterized as a form of prior restraint which is generally impermissible under the free expression clause. The concept of prior restraint is traceable to as far back as Blackstone's Commentaries from the 18th century. Its application is integral to the development of the modern democracy. "In the first place, the main purpose of such constitutional provisions is 'to prevent all such previous restraints upon publications as had been practiced by other governments,' and they do not prevent

the subsequent punishment of such as may be deemed contrary to the public welfare."[18] In *Nebraska Press Association v. Stuart,*[19] the United States Supreme Court noted that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."[20]

Yet prior restraint "by contrast and by definition, has an immediate and irreversible sanction."[21] The assailed act of the NTC, contained in what is after all an unenforceable Press Release, hardly constitutes "an immediate and irreversible sanction." In fact, as earlier noted, the Press Release does not say that it would immediately sanction a broadcast station which airs the *Garci* tapes. What it does say is that only "if it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation" that the stations could be subjected to possible suspension. It is evident that the issuance does not prohibit the airing of the *Garci* tapes or require that the broadcast stations obtain permission from the government or the NTC to air such tapes.

How then have my esteemed colleagues, the Chief Justice and Justice Carpio, arrived at their conclusion that the Press Release operated as a prior restraint? Justice Carpio characterizes the Press Release as a "warning," and the document does use the word "warned," yet a warning is not "an immediate and irreversible sanction." The warning embodied in the Press Release is neither a legally enforceable vehicle to impose sanction nor a legally binding condition precedent that presages the actual sanction. However one may react to the Press Release or the perceived intent behind it, the issuance still does not constitute "an immediate and irreversible sanction."

On the other hand, the Decision discusses extensively what prior restraint is, characterizing it, among others things, as "official

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[18] See *e.g.*, *Patterson v. Colorado*, 205 U.S. 454 (1907); *Near v. Minnesota*, 283 U.S. 697 (1931).

[19] 427 U.S. 539 (1976).

[20] *Id*. at 559.

[21] *Id*.

government restrictions on the press or other forms of expression in advance of actual publication or dissemination."[22] The majority enumerates certain governmental acts which constitute prior restraint, such as the approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; injunctions against publication; the closure of the business or printing offices of certain newspapers; or more generally, "[a]ny law or official [act] that requires some form of permission to be had before publication can be made."[23]

The Press Release does not fit into any of the acts described above in the majority opinion. Neither can it be identified as an "official government restriction" as it simply does not levy any actual restriction on the subjects of NTC regulation. Still, without undertaking a demonstration how the Press Release actually restrained free expression, the majority surprisingly makes a leap of logic, concluding as it does that such an informal act as a press statement is covered by the prior restraint concept.[24] As with Justice Carpio, the majority does not precisely explain how the Press Release could constitute an actual restraint, worded as it was with nary a notion of restriction and given its lack "of an immediate and irreversible sanction."

Absent prior restraint, no presumption of invalidity can arise.

IV-B.

I fear that the majority especially has unduly fused the concepts of "prior restraint" and "chilling effect." There are a few similarities between the two concepts especially that both come into operation before the actual speech or expression finds light. At the same time, there are significant differences.

A government act that has a chilling effect on the exercise of free expression is an infringement within the constitutional

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[22] Decision, p. 19; citing J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY,* 225 (2003 ed.)

[23] *Id*.

[24] *Id*. at 35.

purview. As the liberal lion Justice William Brennan announced, in *NAACP v. Button*,[25] "**the threat of restraint, as opposed to actual restraint itself, may deter the exercise of the right to free expression almost as potently as the actual application of sanctions**."[26] Such threat of restraint is perhaps a more insidious, if not sophisticated, means for the State to trample on free speech. Protected expression is chilled simply by speaking softly while carrying a big stick.

In distinguishing chilling effect from prior restraint, *Nebraska Press Association*, citing Bickel, observed, "[i]f it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint "freezes" it at least for the time."[27] An act of government that chills expression is subject to nullification or injunction from the courts, as it violates Section 3, Article III of the Constitution. "Because government retaliation tends to chill an individual's exercise of his right to free expression, public officials may not, as a general rule, respond to an individual's protected activity with conduct or speech even though that conduct or speech would otherwise be a lawful exercise of public authority.[28]

On the one hand, Justice Carpio does not bother to engage in any "chilling effect" analysis. On the other hand, the majority does conclude that the acts of the NTC had a chilling effect. Was there truly a chilling effect resulting from the Press Release of the NTC?

While the act or issuance itself may evince the impression of a chilling effect, there still must be factual evidence to support the conclusion that a particular act of government actually engendered a chilling effect. **There appears to be no case in**

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[25] 371 U.S. 415 (1963).

[26] See *NAACP v. Button*, 371 U.S. 415, 433 (1963). Emphasis supplied.

[27] *Supra* note 19 at 559; citing A. BICKEL, *THE MORALITY OF CONSENT* (1975).

[28] *The Baltimore Sun Company v. Ehrlich*, No. 05-1297 (U.S. 4th Circuit), 15 February 2006; citing *Board of Country Commissioners v. Umbehr*, 518 U.S. 668, 674 (1996).

American jurisprudence where a First Amendment claim went forward in the absence of evidence that speech was actually chilled.[29]

In a case decided just last year by a U.S. District Court in Georgia,[30] the following summary was provided on the evidentiary requirement in claims of a chilling effect in the exercise of First Amendment rights such as free speech and association:

4. *Proof of Chilling Effect*

Defendants' argue that Plaintiffs have failed to introduce evidence of a chilling effect, which is required to maintain a First Amendment claim. There is some uncertainty regarding the extent of evidence required to sustain a First Amendment challenge based on the chilling effect of compelled disclosure of protected political activity. *See In re Grand Jury Proceeding,* 842 F.2d 1229, 1235-36 (11th Cir.1988). The Supreme Court has indicated on several occasions that some evidence of a chilling effect is required.

In *NAACP*, for example, the Supreme Court accepted that a chilling effect would result from the compelled disclosure of the NAACP's membership lists because of "uncontroverted evidence" in the record that members of the NAACP had suffered past adversity as a result of their known membership in the group. 357 U.S. at 464-65, 78 S.Ct. 1163. The Court in *Buckley v. Valeo,* however, emphasized, in rejecting a challenge to campaign finance disclosure laws based on its alleged chilling effect on political association, that there was no record evidence of a chilling effect proving a violation of the right to association. *Buckley,* 424 U.S. at 71-72, 96 S.Ct. 612 (noting that failure to tender evidence of chilling effect lessened scrutiny applied to First Amendment challenge to campaign donation disclosure laws).

Seizing on this apparent evidentiary requirement, several lower courts have rejected right of association challenges for lack of

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[29] "The Court notes, however, that it has found no case in which a First Amendment claim went forward in the absence of allegations or evidence that speech was actually chilled." *Zieper v. Metzinger*, No. 00 Civ. 5595 (PKC), U.S. District Court, S.D. New York, 22 August 2005; citing *Davis v. Village Park II Realty Co.*, 578 F.2d at 464.

[30] *Local 491, International Brotherhood of Police Officers v. Gwinnet County*, 510 F.Supp. 2d1271.

evidence of a chilling effect. *See, e.g., Richey v. Tyson,* 120 F.Supp.2d 1298, 1324 (S.D.Ala.2000) (requiring, in challenge of campaign finance law, evidence of a "reasonable probability" of threats, harassment, or reprisals "from sources such as specific evidence of past or present harassment of members or of the organization, a pattern of threats, specific manifestations of public hostility, or conduct visited on organizations holding similar views"); *Alabama State Federation of Teachers, AFL-CIO v. James,* 656 F.2d 193, 197 (5th Cir. Unit B Sept.17, 1981) (rejecting right of association challenge for lack of evidence of chilling effect); *Int'l Organization of Masters, Mates, and Pilots,* 575 F.2d 896, 905 (D.C.Cir.1978) (same).

But the Eleventh Circuit has drawn a distinction between challenges to political campaign donation disclosure rules of the sort at issue in *Buckley* and *Richey* and challenges to government investigations into "particular political group or groups" of the sort in *NAACP* and at issue in this case. *See In re Grand Jury Proceeding,* 842 F.2d at 1236. In doing so, the Eleventh Circuit suggested that a "more lenient" showing applies to targeted investigations because "the government investigation itself may indicate the possibility of harassment." *Id*.; *see also Pollard v. Roberts,* 283 F.Supp. 248, 258 (D.C.Ark.1968), aff'd *per curiam* 393 U.S. 14, 89 S.Ct. 47, 21 L.Ed.2d 14 (1968) (finding prosecutor's attempt to subpoena the names of contributors to a political campaign unconstitutional, despite "no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question," because "it would be naive not to recognize that the disclosure of the identities of contributors to campaign funds would subject at least some of them to potential economic or political reprisals of greater or lesser severity"); *cf. also Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358, 1366-67 (11th Cir.1999) (concluding, without discussing record evidence of chilling effect, that statute which required disclosure of names of principal stockholders of adult entertainment establishments was abridgement of First Amendment).

In addition, concerns about the economic vulnerabilities of public employees have led courts to more easily find the presence of a chilling effect on disclosure rules imposed on public employees. *See, e.g., Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Commission of New York Harbor,* 667 F.2d 267, 271-72 (2d Cir.1981). Where the government has "pervasive control over the economic livelihood" or "professional destiny" of its employees, it may be

obvious that compelling disclosure of organizational affiliations under threat of discipline could create a "substantial danger" of an "inevitable" chilling effect. *Id.* Thus, when examining freedom of association challenges in the public employment context, courts have applied a "common sense approach." *Id.* at 272; *see also Shelton*, 364 U.S. at 486, 81 S.Ct. 247 (noting, in finding questionnaire distributed to public teachers inquiring into their organizational memberships unconstitutional, that burden on teacher's freedom to associate was "conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made," and not discussing evidence of chilling effect); *Fraternal Order of Police*, 812 F.2d at 119-20 ("We recognize that the record contains no evidence that would support a finding that a required response to this question would chill the applicant's or family member's associational activities. However, in light of the absence of any legitimate interest asserted by the City to justify the inquiry, we conclude that the question would not even withstand a more relaxed scrutiny than that usually applied to questions which seek disclosure of associational ties.").[31]

It makes utter sense to impose even a minimal evidentiary requirement before the Court can conclude that a particular government action has had a chilling effect on free speech. Without an evidentiary standard, judges will be forced to rely on intuition and even personal or political sentiments as the basis for determining whether or not a chilling effect is present. That is a highly dangerous precedent, and one that clearly has not been accepted in the United States. In fact, in *Zieper v. Metzinger*,[32] the U.S. District Court of New York found it relevant, in ruling against the petitioner, that Zieper "has stated affirmatively that his speech was not chilled in any way."[33] "Where a party can show no change in his behavior, he has quite plainly shown no chilling of his First Amendment right to free speech."[34]

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[31] *Id*. at 1294-1296.

[32] *Supra* note 18.

[33] *Id*. at 526.

[34] *Id*., citing *Curly v. Village of Suffern*, 268 F.3d 65 (2d Cir. 2001), at 73.

In view of its regulatory jurisdiction over broadcast media, the ability of the NTC to infringe the right to free expression extends only to its subjects of regulation, not to private persons such as petitioner. Thus, to consider at bar whether or not the NTC Press Release had a chilling effect, one must look into the evidence on record establishing the broadcast media's reaction to the Press Release.

The majority states that "[t]here is enough evidence of chilling effect of the complained acts of record," alluding to "the warnings given to media [which] came from no less the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media."[35] With due respect, I submit that what the record establishes is merely the presence of the cause for chilling (the Press Release), but not the actual chilling effect itself on the broadcast media. In that respect, the Joint Statement of the NTC and the KBP executed just three (3) days after the issuance of the Press Release, becomes material.

In the employment of the "chilling effect mode of analysis," disregarding the actual effects would mean dispensing with any evidentiary requirement for the constitutional claim. That is a doctrine which does not bode well for the Court's future in constitutional adjudication, and one I expect that will be significantly modified in due time.

In the Joint Statement, the KBP assented to the manifestation that "NTC did not issue any [Memorandum Circular] or Order constituting a restraint of press freedom or censorship, as well as disavowed having acted or intending "to limit or restrict the interview of members of the opposition or free expression of views."[36] The Joint Statement can certainly be taken in favor of the NTC as proof that its Press Release did not actually create a chilling effect on the broadcast media. On its face, it evinces the KBP's contentment with the Press Release and all other steps taken by the NTC with respect to the *Garci*

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[35] Decision, p. 35.

[36] *Rollo*, p. 86.

tapes, coupled with the acknowledgment that the NTC had not infringed the right to free expression of its subjects of regulation.

The majority casts aspersions on the KBP for "inexplicably joining the NTC in issuing an ambivalent Joint Press Statement" and on the perceived "silence on the sidelines on the part of some media practitioners."[37] Yet these are derogatory conjectures that are not supported by the record. It is quite easy to draw such negative inference, but there is another inference that can be elicited from the evidence on record — that the KBP was so satisfied with the NTC's actions it consented to the averments in the Joint Statement. Since Independence, and outside of the Marcos years, there is no tradition of cowardice on the part of the Philippine media, even in the face of government retribution. Indeed, it is false and incongruous to dilute with aspersions of docility and inertness the true image of the most robust, vigilant and strident media in Asia.

The best indication that the Philippine broadcast media was cowered or chilled by the NTC Press Release, if ever, would have been its initiation of a suit similar to that at bar, or its participation herein. The fact that it did not can lead to the reasonable assumption that the Press Release did not instill fear in the members of the broadcast media, for they have since then, commendably and in true-to-form fashion challenged before the courts other NTC issuances which they perceived as actual threats to their right to free expression.[38]

It bears adding that I had proposed during the deliberations of this case that the KBP or other large media organizations be allowed to intervene should they be so minded, if only to elicit their views for the record whether the NTC by issuing the Press Release truly chilled the exercise of their rights to expression, notwithstanding the Joint Statement. After all, **it would be paternalistic at best, presumptuous at worst,**

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[37] Decision, pp. 35-36.

[38] At least one case which has reached this Court challenges the validity of certain issuances of the NTC which were promulgated or reiterated shortly after the February 2006 declaration of a "state of emergency."

for the Court to assume that conclusion without affording the broadcast media the opportunity to present its views on the question. Yet a majority of the members of the Court declined to take that step, thereby disallowing the introduction of more sufficient evidence to warrant a ruling against the NTC.

Thus, we are left with utter paucity of evidence that the NTC had infringed the press freedom of its subjects of regulation mainly because of the broadcast media's non-participation in the petition at bar. If only on that account, I have to vote against the writ sought against the NTC. To decide otherwise would simply set an injudicious precedent that permits the affirmative relief to constitutional claims without having to bother with the need for evidence.

There is another point raised with respect to the NTC aspect of this case, and that is the question of whether the NTC actually has the statutory authority to enjoin or sanction the broadcast of the tapes. The majority opinion does not conclusively settle that question, and that is for the best, given the absence of comprehensive arguments offered by the petitioner on that issue. I reserve my right to offer an opinion on that question in the appropriate case. Suffice it to say, there are at least two other cases now pending with this Court which raise precisely that question as the central issue and not merely as an afterthought. Those cases, which do offer more copious arguments on that issue than those presented before us, would provide a more fortuitous venue for the settlement of those questions.

IV-C.

The majority and concurring opinions hardly offer any rebuke to the DOJ Secretary even as they vote to grant affirmative relief against his actions. This ensued, I suspect, due to the undue focus placed on the arguments concerning the NTC, even though the petition itself was not so oriented. But for my part, it is the unequivocal threats to prosecute would-be-offenders, made no less by the head of the principal law agency

of the government charged with the administration of the criminal justice system,[39] that constitute the violation of a fundamental freedom that in turn warrants this Court's intervention.

The particular acts complained of the DOJ Secretary are explained in detail in the petition,[40] narrated in the decision,[41] and corroborated by contemporary news accounts published at that time.[42] The threats are directed at anybody in possession of, or intending to broadcast or disseminate, the tapes. Unlike the NTC, the DOJ Secretary has the actual capability to infringe the right to free expression of even the petitioner, or of anybody for that matter, since his office is empowered to initiate criminal prosecutions. Thus, petitioner's averments in his petition and other submissions comprise the evidence of the DOJ Secretary's infringement of the freedom of speech and expression.

Was there an actual infringement of the right to free expression committed by the DOJ Secretary? If so, how was such accomplished? Quite clearly, the DOJ Secretary did infringe on the right to free expression by employing "the threat of restraint,"[43] thus embodying "government retaliation [that] tends to chill an individual's exercise of his right to free expression."[44] The DOJ Secretary plainly and directly threatened anyone in possession of the *Garci* tapes, or anyone who aired or disseminated the same, with the extreme sanction of criminal

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[39] See Sec. 1, Chapter 1, Title III, Book IV, Administrative Code of 1987, which contains the "Declaration of Policy" of the Department of Justice. "It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; x x x"

[40] *Rollo,* pp. 8-10.

[41] Decision, pp. 3-4.

[42] See *e.g.*, "DOJ warns media *vs*. playing tapes" (first published by ABS-CBN News on 10 June 2005), at http://www.abs-cbnnews.com/topofthehour.aspx?StoryId=7564 (last visited, 13 February 2008).

[43] See note 26.

[44] See note 28.

prosecution and possible imprisonment. He reiterated the threats as he directed the NBI to investigate the airing of the tapes. He even extended the warning of sanction to the Executive Press Secretary. These threats were evidently designed to stop the airing or dissemination of the *Garci* tapes — a protected expression which cannot be enjoined by executive fiat.

Tasked with undertaking the defense of the DOJ Secretary, the OSG offered not even a ghost of a contest as soon as the bell for the first round rang. In abject surrender, it squeezed in just one paragraph[45] in its 27-page Comment for that purpose.

The arguments offered in that solitary paragraph are meager. It avers that the media reports are without probative value or, at best, inconclusive as the declarations therein may have been quoted inaccurately or out of context.[46] Yet the OSG does not deny that the statements were made,[47] failing even to offer what may have been the "accurate context." The OSG also points out that the DOJ Secretary has not actually "made any issuance, order or instruction to the NBI to go after such media organizations." Yet the fact that the DOJ Secretary has yet to make operational his threats does not dissuade from the conclusion that the threats alone already chilled the atmosphere of free speech or expression.

V.

By way of epilogue, I note that the *Garci* tapes have found shelter in the Internet[48] after the broadcast media lost interest in airing those tapes, after the newsprint that contained the transcript had dissembled. The tapes are widely available on the Internet and not only in websites maintained by traditional media outfits, but also in such media-sharing sites as Google-owned *YouTube*,

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[45] *Rollo*, p. 75.

[46] *Id*.

[47] See also note 42.

[48] Already, the U.S. Supreme Court in *Reno v. ACLU* , 521 U.S. 844 had pronounced that the factors that justify the government regulation of the broadcast medium are not present in cyberspace. It will be inevitable that this Court will soon have to adjudicate a similar issue.

which has at least 20 different files of the tapes.[49] Internationally popular websites such as the online encyclopedia *Wikipedia* have linked to the tapes as well.[50] Then there is the fact that excerpts of the tapes were remixed and widely distributed as a popular ringtone for cellular phones.

Indeed, the dimensions of the issue have long extended beyond the Philippine mass media companies and the NTC. This issue was hardly limited to the right of Philippine broadcast media to air the tapes without sanction from the NTC. It involved the right of any person wherever in the world situated to possess and disseminate copies of the tape without fear of reprisal from the Philippine government.

Still, the vitality of the right to free expression remains the highlight of this case. Care and consideration should be employed in presenting such claims before the courts, and the hope is for a growing sophistication and specialization in the litigation of free speech cases.

For all the above, I vote to GRANT the petition against respondent DOJ Secretary and DISMISS the same insofar as the NTC is concerned.

DISSENTING OPINION

NACHURA, *J.*:

I respectfully register my dissent to the majority opinion penned by the esteemed Chief Justice. The assailed press releases and statements do not constitute a prior restraint on free speech. It was not improper for the NTC to warn the broadcast media that the airing of taped materials, if subsequently shown to be false, would be a violation of law and of the terms of their certificate of authority, and could lead, after appropriate investigation, to the cancellation or revocation of their license.

The Facts

[49] See http://www.youtube.com/results?search_query=Hello+Garci. ("Search Results for "Hello Garci").

[50] See "Hello Garci scandal" (http://en.wikipedia.org/wiki/Hello_Garci).

This case arose from events that transpired a year after the 2004 national and local elections, a period marked by disquiet and unrest; events that rocked the very foundations of the present administration.

To recall, on June 5, 2005, Press Secretary Ignacio Bunye conveyed to reporters that the opposition was planning to destabilize the administration by releasing an audiotape of a bugged mobile phone conversation allegedly between the President of the Republic of the Philippines and a high-ranking official of the Commission on Elections (COMELEC).[1]

The following day, June 6, 2005, Secretary Bunye presented and played two compact discs (CD's) to the Malacañan Press Corps, and explained that the first contained the wiretap, while the second, the spliced, doctored, and altered version which would suggest that during the 2004 National and Local Elections the President instructed the COMELEC official to manipulate in her favor the election results.[2]

Atty. Alan Paguia, former counsel of then President Joseph E. Estrada, subsequently released, on June 7, 2005, the alleged authentic tape recordings of the wiretap. Included, among others, in the tapes were purported conversations of the President, First Gentleman Jose Miguel Arroyo, COMELEC Commissioner Virgilio Garcillano, and the late Senator Robert Barbers.[3]

On June 8, 2005, respondent Secretary of the Department of Justice (DOJ), Raul Gonzalez, informed news reporters that persons in possession of copies of the wiretap and media outlets broadcasting, or publishing the contents thereof, could be held liable under the Anti-Wiretapping Act [Republic Act No. 4200[4]].

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[1] *Rollo*, pp. 6-7.

[2] *Id*. at 7 and 58.

[3] *Id*. at 8 and 59.

[4] Entitled "An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for Other Purposes."

He further told newsmen, on the following day, that he had already instructed the National Bureau of Investigation (NBI) to monitor all radio stations and television networks for possible violations of the said law.[5]

Then, on June 10, 2005, former NBI Deputy Director Samuel Ong presented to the media the alleged master tape recordings of the wiretap or the so-called "mother of all tapes," and disclosed that their contents were wiretapped by T/Sgt. Vidal Doble of the Intelligence Service of the Armed Forces of the Philippines (ISAFP). Ong then called for the resignation of the President.[6]

On June 11, 2005, after several news reports, respondent National Telecommunications Commission (NTC) issued the following press release:

Contact:
Office of the Commissioner
National Telecommunications Commission
BIR Road, East Triangle, Diliman, Quezon City
Tel. 924-4048/924-4037
E-mail: commissioner@ntc.gov.ph

NTC GIVES FAIR WARNING TO RADIO AND TELEVISION OWNERS/OPERATORS TO OBSERVE ANTI-WIRETAPPING LAW AND PERTINENT NTC CIRCULARS ON PROGRAM STANDARDS

In view of the unusual situation the country is in today, The (sic) National Telecommunications Commission (NTC) calls for sobriety among the operators and management of all radio and television stations in the country and reminds them, especially all broadcasters, to be careful and circumspect in the handling of news reportage, coverages of current affairs and discussion of public issues, by strictly adhering to the pertinent laws of the country, the current program standards embodied in radio and television codes and the existing circulars of the NTC.

The NTC said that now, more than ever, the profession of broadcasting demands a high sense of responsibility and discerning judgment of

[5] *Rollo*, pp. 8-9 and 59.

[6] *Id*. at 10 and 59.

fairness and honesty at all times among broadcasters amidst all these rumors of unrest, destabilization attempts and controversies surrounding the alleged wiretapping of President GMA (sic) telephone conversations.

Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC warns all radio stations and television networks owners/operators that the conditions of the authorizations and permits issued to them by Government like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use its stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the Commission that certain personalities are in possession of alleged taped conversation which they claim, (sic) involve the President of the Philippines and a Commissioner of the COMELEC regarding their supposed violation of election laws. These personalities have admitted that the taped conversations are product of illegal wiretapping operations.

Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, (sic) it is the position of the Commission that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of Authority issued to these radio and television stations. If it has been (sic) subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.

In addition to the above, the Commission reiterates the pertinent NTC circulars on program standards to be observed by radio and television stations. NTC Memorandum Circular No. 111-12-85 explicitly states, among others, that "all radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matters being broadcast and/or telecast if the tendency thereof" is to disseminate false information or such other willful misrepresentation, or to propose and/or incite treason,

rebellion or sedition. The foregoing directive had been reiterated in NTC Memorandum Circular No. 22-89 which, in addition thereto, prohibited radio, broadcasting and television stations from using their stations to broadcast or telecast any speech, language or scene disseminating false information or willful misrepresentation, or inciting, encouraging or assisting in subversive or treasonable acts.

The Commission will not hesitate, after observing the requirements of due process, to apply with full force the provisions of the said Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.[7]

On June 14, 2005, respondent NTC held a dialogue with the Officers and Board of Directors of the *Kapisanan ng mga Broadcasters sa Pilipinas* (KBP) to clarify the said press release. As a result, the NTC and the KBP issued a joint press release which reads:[8]

JOINT PRESS STATEMENT: NTC AND KBP

- CALL FOR SOBRIETY, RESPONSIBLE JOURNALISM, AND OBSERVANCE OF LAW, AND THE RADIO AND TELEVISION CODES.
- NTC RESPECTS AND WILL NOT HINDER FREEDOM OF THE PRESS AND THE RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN. KBP & ITS MEMBERS HAVE ALWAYS BEEN COMMITTED TO THE EXERCISE (SIC) PRESS FREEDOM WITH HIGH SENSE OF RESPONSIBILITY AND DISCERNING JUDGMENT OF FAIRNESS AND HONESTY.
- NTC DID NOT ISSUE ANY MC OR ORDER CONSTITUTING A RESTRAINT OF PRESS FREEDOM OR CENSORSHIP. NTC FURTHER DENIES AND DOES NOT INTEND TO LIMIT OR RESTRICT THE INTERVIEW OF MEMBERS OF THE OPPOSITION OR FREE EXPRESSION OF VIEWS.
- WHAT IS BEING ASKED BY NTC IS THAT THE EXERCISE OF PRESS FREEDOM IS DONE RESPONSIBLY.

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[7] *Id*. at 109-110.

[8] *Id*. at 116.

- KBP HAS PROGRAM STANDARDS THAT KBP MEMBERS WILL OBSERVE IN THE TREATMENT OF NEWS AND PUBLIC AFFAIRS PROGRAMS. THESE INCLUDE VERIFICATION OF SOURCES, NON-AIRING OF MATERIALS THAT WOULD CONSTITUTE INCITING TO SEDITION AND/OR REBELLION.
- THE KBP CODES ALSO REQUIRE THAT NO FALSE STATEMENT OR WILLFUL MISREPRESENTATION IS MADE IN THE TREATMENT OF NEWS OR COMMENTARIES.
- THE SUPPOSED WIRETAPPED (SIC) TAPES SHOULD BE TREATED WITH SENSITIVITY AND HANDLED RESPONSIBLY GIVING DUE CONSIDERATION TO THE PROCESSES BEING UNDERTAKEN TO VERIFY AND VALIDATE THE AUTHENTICITY AND ACTUAL CONTENT OF THE SAME.[9]

On June 21, 2005, petitioner Francisco Chavez, a Filipino citizen, taxpayer and law practitioner, instituted the instant Rule 65 Petition[10] for *certiorari* and prohibition with a prayer for the issuance of a temporary restraining order on the following grounds:

RESPONDENTS COMMITTED BLATANT VIOLATIONS OF THE FREEDOM OF EXPRESSION AND OF THE PRESS AND THE RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN ENSHRINED IN ARTICLE III, SECTIONS 4 AND 7 OF THE 1987 CONSTITUTION.

RESPONDENT NTC ACTED BEYOND ITS POWERS AS A REGULATORY BODY UNDER EXECUTIVE ORDER 546 AND REPUBLIC ACT NO. 7925 WHEN IT WARNED RADIO BROADCAST AND TELEVISION STATIONS WITH DIRE CONSEQUENCES IF THEY CONTINUED TO AIR CONTENTS OF THE CONTROVERSIAL TAPES OF THE PRESIDENT'S CONVERSATION.[11]

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[9] *Id*. at 111-112.

[10] *Id*. at 3-42.

[11] *Id*. at 18.

In their Comment[12] to the petition, the respondents, through the Office of the Solicitor General (OSG), countered that: (1) the petitioner had no legal standing to file, and had no clear case or cause of action to support, the instant petition as to warrant judicial review;[13] (2) the respondents did not violate petitioner's and/or the public's fundamental liberties of speech, of expression and of the press, and their right to information on matters of public concern;[14] and (3) the respondent NTC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it "fairly warned" radio and television owners/operators to observe the Anti-Wiretapping Law and pertinent NTC circulars on program standards.[15]

The Issues

For the resolution, therefore, of the Court are the following issues: (1) whether or not petitioner has *locus standi*; (2) whether or not there exists an actual case or controversy ripe for judicial review; and (3) whether or not the respondents gravely abused their discretion to warrant remedial action from the Court.

On the Procedural Issues

Petitioner has locus standi

Petitioner has standing to file the instant petition. The test is whether the party has 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.[16] When suing as a citizen, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about

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[12] *Id*. at 56-83.

[13] *Id*. at 64-67.

[14] *Id*. at 68-75.

[15] *Id*. at 75-82.

[16] *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 755.

to be subjected to some burdens or penalties by reason of the statute or act complained of.[17] When the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.[18]

In the case at bench, petitioner Chavez justifies his standing by alleging that the petition involves the enforcement of the constitutional rights of freedom of expression and of the press, and to information on matters of public concern.[19] As a citizen of the Republic and as a taxpayer, petitioner has already satisfied the requisite personal stake in the outcome of the controversy. In any case, the Court has discretion to relax the procedural technicality on *locus standi*, given the liberal attitude it has shown in a number of prior cases, climaxing in *David v. Macapagal-Arroyo*.[20]

The main issues have been mooted, but the case should nonetheless be resolved by the Court

The exercise by this Court of the power of judicial inquiry is limited to the determination of actual cases and controversies.[21] An actual case or controversy means an existing conflict that is appropriate or ripe for judicial determination, one that is not conjectural or anticipatory, otherwise the decision of the court will amount to an advisory opinion. The power does not extend to hypothetical

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[17] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 896 (2003).

[18] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 and 171424, May 3, 2006, 489 SCRA 160, 223.

[19] *Rollo*, p. 15.

[20] *Supra* note 18.

[21] *Dumlao v. COMELEC*, G.R. No. 52245, January 22, 1980, 95 SCRA 392, 401. This case explains the standards that have to be followed in the exercise of the power of judicial review, namely: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case.

questions since any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.[22] Neither will the Court determine a moot question in a case in which no practical relief can be granted. Indeed, it is unnecessary to indulge in academic discussion of a case presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[23]

In the instant case, it is readily observable that the subsequent joint statement of the respondent NTC and the Officers and Board of Directors of the KBP after their June 14, 2005 dialogue not only substantially diminished[24] but, in fact, obliterated the effects of the earlier press warnings, thus rendering the case moot and academic. Notably, the joint press statement acknowledged that "*NTC did not issue any memorandum circular or order constituting a restraint of press freedom or censorship.*"

A case becomes moot when its purpose has become stale.[25]

Be that as it may, the Court should discuss and resolve the fundamental issues raised herein, in observance of the rule that courts shall decide a question otherwise moot and academic if it is capable of repetition yet evasive of review.[26]

The Dissent

The assailed press statement does not infringe on the constitutional right to free expression

Petitioner assails the constitutionality of respondents' press release and statements warning radio stations and television networks of

[22] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 465 Phil. 860, 889-890 (2004).

[23] *Lanuza, Jr. v. Yuchengco*, G.R. No. 157033, March 28, 2005, 454 SCRA 130, 138.

[24] *See Multimedia Holdings Corporation v. Circuit Court of Florida, St. John's County*, 544 U.S. 1301, 125 S.Ct. 1624, 1626 (2005).

[25] *Rufino v. Endriga*, G.R. Nos. 139554 and 139565, July 21, 2006, 496 SCRA 13, 46.

[26] *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, August 22, 2006, 499 SCRA 434, 447.

the possible cancellation of their licenses and of potential criminal prosecution that they may face should they broadcast or publish the contents of the tapes. Petitioner contends that the assailed press release and statements infringe on the freedom of expression and of the press.

I do not agree, for the following reasons:

1. The issuance of the press release was a valid exercise of the NTC's regulatory authority over broadcast media.

Admittedly, freedom of expression enjoys an exalted place in the hierarchy of constitutional rights. But it is also a settled principle, growing out of the nature of well-ordered civil societies that the exercise of the right is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, not injurious to the rights of the community or society.[27] Consistent with this principle, the exercise of the freedom may be the subject of reasonable government regulation.

The broadcast media are no exception. In fact, in *Federal Communications Commission (FCC) v. League of Women Voters in America*,[28] it was held that —

> (W)e have long recognized that Congress, acting pursuant to the Commerce Clause, has power to regulate the use of this scarce and valuable national resource. The distinctive feature of Congress' efforts in this area has been to ensure through the regulatory oversight of the FCC that only those who satisfy the "public interest, convenience and necessity" are granted a license to use radio and television broadcast frequencies.

In the Philippines, it is the respondent NTC that has regulatory powers over telecommunications networks. In Republic Act No. 7925,[29] the NTC is denominated as its principal administrator, and as such shall take the necessary measures to implement

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[27] *Primicias v. Fugoso,* 80 Phil. 71 (1948), quoted in Justice Azcuna's *ponencia* in *Bayan v. Ermita,* G.R. No. 169838, April 25, 2006.

[28] 468 U.S. 364 (1984).

[29] An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications.

the policies and objectives set forth in the Act. Under Executive Order 546,[30] the NTC is mandated, among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities.[31] The NTC exercises quasi-judicial powers.[32]

The issuance of the press release by NTC was well within the scope of its regulatory and supervision functions, part of which is to ensure that the radio and television stations comply with the law and the terms of their respective authority. Thus, it was not improper for the NTC to warn the broadcast media that the airing of taped materials, if subsequently shown to be false, would be a violation of law and of the terms of their certificate of authority, and could lead, after appropriate investigation, to the cancellation or revocation of their license.

2. The press release was not in the nature of "prior restraint" on freedom of expression

Courts have traditionally recognized two cognate and complementary facets of freedom of expression, namely: freedom from censorship or prior restraint and freedom from subsequent punishment. The first guarantees untrammeled right to expression, free from legislative, administrative or judicial orders which would effectively bar speech or publication even before it is made. The second prohibits the imposition of any sanction or penalty for the speech or publication after its occurrence. Freedom from prior restraint has enjoyed the widest spectrum of protection, but no real constitutional challenge has been raised against the validity of laws that punish abuse of the freedom, such as the laws on libel, sedition or obscenity.

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[30] Dated July 23, 1979.

[31] Section 15(e), (g), (h), Executive Order No. 546.

[32] Section 16, Executive Order No. 546.

"Prior restraint" is generally understood as an imposition in advance of a limit upon speech or other forms of expression.[33] In determining whether a restriction is a prior restraint, one of the key factors considered is whether the restraint prevents the expression of a message.[34] In *Nebraska Press Association v. Stuart*,[35] the U.S. Supreme Court declared:

> A prior restraint . . . by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time.

As an aspect of freedom of expression, prior restraint should not be confused with subsequent punishment. In *Alexander v. U.S.*,[36] petitioner's complaint was that the RICO forfeiture provisions on businesses dealing in expressive materials constituted "prior restraint" because they may have an improper "chilling" effect on free expression by deterring others from engaging in protected speech. In rejecting the petitioner's contention and ruling that the forfeiture is a permissible criminal punishment and not a prior restraint on speech, the U.S. Supreme Court said:

> The term prior restraint is used "to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." Temporary restraining orders and permanent injunctions — *i.e.*, court orders that actually forbid speech activities — are classic examples of prior restraints.
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> Finally, petitioner's proposed definition of the term "prior restraint" would undermine the time-honored distinction between barring speech in the future and penalizing past speech. The doctrine of prior restraint originated in the common law of England where prior restraints of

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[33] *State v. Haley*, 687 P.2d 305, 315 (1984).

[34] *Murray v. Lawson*, 138 N.J. 206, 222; 649 A.2d 1253, 1261 (1994).

[35] 427 U.S. 539, 559 (1976).

[36] 510 U.S. 909, 114 S.Ct. 295, June 28, 1993.

the press were not permitted, but punishment after publication was. This very limited application of the principle of freedom of speech was held inconsistent with our First Amendment as long ago as *Grosjean v. American Press Co.* While we may have given a broader definition to the term "prior restraint" than was given to it in English common law, our decisions have steadfastly preserved the distinction between prior restraints and subsequent punishments. Though petitioner tries to dismiss this distinction as "neither meaningful nor useful," we think it is critical to our First Amendment jurisprudence. Because we have interpreted the First Amendment as providing greater protection from prior restraints than from subsequent punishments, it is important for us to delineate with some precision the defining characteristics of a prior restraint. To hold that the forfeiture order in this case constituted a prior restraint would have the exact opposite effect. It would blur the line separating prior restraints from subsequent punishments to such a degree that it would be impossible to determine with any certainty whether a particular measure is a prior restraint or not.

A survey of free speech cases in our jurisdiction reveals the same disposition: there is prior restraint when the government act forbids speech, prohibits the expression of a message, or imposes onerous requirements or restrictions for the publication or dissemination of ideas. In theses cases, we did not hesitate to strike down the administrative or judicial order for violating the free expression clause in the Constitution.

Thus, in *Primicias v. Fugoso*[37] and in *Reyes v. Bagatsing*,[38] the refusal, without valid cause, of the City Mayor of Manila to issue a permit for a public assembly was held to have infringed freedom of expression. In *Burgos v. Chief of Staff*[39] and in *Eastern Broadcasting v. Dans,*[40] the closure of the printing office of the newspapers, *We Forum* and *Metropolitan Mail*, and of radio station DYRE in Cebu, respectively, was ruled as violation of freedom of the press.

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[37] 80 Phil. 71 (1948).

[38] No. L-65366, November 9, 1983, 125 SCRA 553, 564.

[39] No. L-64261, December 26, 1984, 133 SCRA 800, 816.

[40] 137 SCRA 647.

On election-related restrictions, *Mutuc v. COMELEC*[41] invalidated the respondent's prohibition against the use of taped jingles in mobile units of candidates; *Adiong v. COMELEC*[42] struck down the COMELEC's resolution limiting the posting of candidates' decals and stickers only in designated areas and not allowing them in private or public vehicles; *Sanidad v. COMELEC*[43] declared as unconstitutional the COMELEC prohibition on newspaper columnists and radio commentators to use their columns or programs to campaign for or against the ratification of the organic act establishing the Cordillera Autonomous Region; *ABS-CBN Broadcasting Corporation v. COMELEC*[44] annulled the COMELEC resolution prohibiting the conduct of exit polls; and *Social Weather Stations v. COMELEC*[45] nullified Section 5.4 of Republic Act No. 9006 and Section 24(h) of COMELEC Resolution 3636 which prohibited the publication of pre-election survey results within specified periods.

On movies and television, the injunctive writs issued by lower courts against the movie producers in *Ayer Productions Pty. Ltd. v. Capulong*[46] and in *Viva Productions v. Court of Appeals*[47] were invalidated, while in *Iglesia ni Cristo v. Court of Appeals*,[48] the X-rating given by MTRCB to the television show was ruled as grave abuse of discretion.

But there is no parity between these cases and the case at bench. Unlike the government acts in the above-cited cases, what we have before us now is merely a press release — not an order or a circular — warning broadcast media on the airing of an alleged taped conversation, with the caveat that should

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[41] 36 SCRA 228.

[42] G.R. No. 103956, March 31, 1992, 207 SCRA 712, 715.

[43] G.R. No. 90878, January 29, 1990, 181 SCRA 529, 534-535.

[44] G.R. No. 133486, January 28, 2000.

[45] G.R. No. 147571, May 5, 2001, 357 SCRA 496, 506-507.

[46] Nos. 82380 and 82398, April 29, 1988, 160 SCRA 861.

[47] G.R. No. 123881, March 13, 1997.

[48] G.R. No. 119673, July 26, 1996, 259 SCRA 529.

its falsity be subsequently established, the act could lead to the revocation or cancellation of their licenses, after appropriate investigation. The warnings on possible license revocation and criminal prosecution are simply what they are, mere warnings. They have no compulsive effect, as they do not impose a limit on speech or other forms of expression nor do they prevent the expression of a message.

The judicial angle of vision in testing the validity of the assailed press release against the prior restraint standard is its operation and substance. The phrase "prior restraint" is not a self-wielding sword, nor should it serve as a talismanic test. What is needed is a practical assessment of its operation in specific or particular circumstances.[49]

Significant are our own decisions in a number of cases where we rejected the contention that there was infringement of freedom of expression. In *Lagunzad v. Vda. de Gonzales*,[50] after balancing the right to privacy of Padilla's family with the right to free expression of the movie producer, we did not deem the Licensing Agreement for the movie depiction of the life of Moises Padilla as imposition of an impermissible limit on free speech. In *Presidential Commission on Good Government (PCGG) v. Nepomuceno*,[51] we refused to consider the PCGG takeover of radio station DWRN as an infringement on freedom of the press. In *Tolentino v. Secretary of Finance*,[52] we did not yield to the proposition of the press that the imposition of value added tax (VAT) on the gross receipts of newspapers from advertisements and on their acquisition of paper, ink and services for publication was an abridgment of press freedom. In

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[49] *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441-442; 77 S.Ct. 1325, 1328 (1957).

[50] 181 Phil. 45.

[51] G.R. No. 78750, April 20, 1990, 184 SCRA 449, 462-463.

[52] G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 and 115931, August 25, 1994, 235 SCRA 630, 675-682; see also Court's Resolution on the motions for reconsideration, October 30, 1995, 249 SCRA 628, 652-656.

Lagunzad, we said that while the License Agreement allowed the producer to portray in a movie the life of Moises Padilla, it did not confer poetic license to incorporate fictional embellishments. The takeover in *PCGG* was merely intended to preserve the assets, funds and properties of the station while it maintained its broadcasting operations. The VAT in *Tolentino* did not inhibit or impede the circulation of the newspapers concerned.

Similarly, in the instant case, the issuance of the press release was simply part of the duties of the NTC in the enforcement and administration of the laws which it is tasked to implement. The press release did not actually or directly prevent the expression of a message. The respondents never issued instructions prohibiting or stopping the publication of the alleged wiretapped conversation. The warning or advisory in question did not constitute suppression, and the possible *in terrorem* effect, if any, is not prior restraint. It is not prior restraint because, if at all, the feared license revocation and criminal prosecution come after the publication, not before it, and only after a determination by the proper authorities that there was, indeed, a violation of law.

The press release does not have a "chilling effect" because even without the press release, existing laws — and rules and regulations — authorize the revocation of licenses of broadcast stations if they are found to have violated penal laws or the terms of their authority.[53] The majority opinion emphasizes the chilling effect of the challenged press releases —the fear of prosecution, cancellation or revocation of license by virtue of the said press statements.[54] With all due respect, the majority loses sight of the fact that the press statements are not a prerequisite to prosecution, neither does

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[53] Republic Act No. 3846; Executive Order No. 546; *see* pertinent memorandum circulars at <http://portal.ntc.gov.ph/wps/portal/!ut/p/.cmd/cs/.ce/7_0_A/.s/7_0_MA/_s. 7_0_A/7_0_MA> (visited: January 3, 2008); *see also* terms and conditions of provisional authority and/or certificate of authority granted to radio and television stations, *rollo*, pp. 119-128.

[54] *See Multimedia Holdings Corporation v. Circuit Court of Florida, St. John's County*, *supra* note 24, at 1626-1627.

the petition demonstrate that prosecution is any more likely because of them. If the prosecutorial arm of the Government and the NTC deem a media entity's act to be violative of our penal laws or the rules and regulations governing broadcaster's licenses, they are free to prosecute or to revoke the licenses of the erring entities **with or without the challenged press releases**.[55]

The petitioner likewise makes capital of the alleged prior determination and conclusion made by the respondents that the continuous airing of the tapes is a violation of the Anti-Wiretapping Law and of the conditions of the authority granted to the broadcast stations. The assailed portion of the press release reads:

> Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, it is the position of the commission that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the anti-wiretapping law and the conditions of the provisional authority and/or certificate of authority issued to these radio and television stations.

However, that part of the press statement should not be read in isolation, but in the context of the entire paragraph, the rest of which reads:

> **If it has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation**, the concerned radio and television companies are hereby warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.

Obviously, this latter portion qualifies the earlier part of the paragraph. Only when it has been sufficiently established, after a prosecution or appropriate investigation, that the tapes are false or fraudulent may there be a cancellation or revocation of the station's license. There is no gainsaying that the airing of

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[55] *Id*.

false information or willful misrepresentation constitutes a valid ground for revocation of the license, and so is violation of the Anti-Wiretapping Law which is a criminal offense. But that such revocation of license can only be effected after an appropriate investigation clearly shows that there are adequate safeguards available to the radio and television stations, and that there will be compliance with the due process clause.

It is noteworthy that in the joint press statement issued on June 14, 2005 by the NTC and the *Kapisanan ng mga Broadcasters sa Pilipinas*, there is an acknowledgement by the parties that NTC "did not issue any MC (Memorandum Circular) or order constituting a restraint of press freedom or censorship." If the broadcasters who should be the most affected by the assailed NTC press release, by this acknowledgement, do not feel aggrieved at all, we should be guided accordingly. We cannot be more popish than the pope.

Finally, we believe that the "clear and present danger rule"—the universally-accepted norm for testing the validity of governmental intervention in free speech—finds no application in this case precisely because there is no prior restraint.

3. The penal sanction in R.A. 4200 or the revocation of the license for violation of the terms and conditions of the provisional authority or certificate of authority is permissible punishment and does not infringe on freedom of expression.

The Anti-Wiretapping Law (Republic Act 4200) is a penal statute. Over the years, no successful challenge to its validity has been sustained. Conviction under the law should fittingly be a just cause for the revocation of the license of the erring radio or television station.

Pursuant to its regulatory authority, the NTC has issued memorandum circulars covering Program Standards to be followed by radio stations and television networks, a common provision of which reads:

All radio broadcasting and television stations shall provide adequate public service time, shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting or telecasting of obscene or indecent language, speech and/or scene, **or for the dissemination of false information or willful misrepresentation**, or to the detriment of the public health or to incite, encourage or assist in subversive or treasonable acts.[56]

Accordingly, in the Provisional Authority or the Certificate of Authority issued to all radio, television and cable TV stations, which all licensees must faithfully abide with, there is incorporated, among its terms and conditions, the following clause:

Applicant-Grantee shall provide free of charge, a minimum of thirty (30) hours/month time or access channel thru its radio/ television station facilities to the National Government to enable it to reach the population on important public issues; assist public information and education; **conform with the ethics of honest enterprise; and shall not use its stations for the telecasting of obscene or for dissemination of false information or willful misrepresentation, or do any such act to the detriment of public welfare, health, morals or to incite, encourage, or assist in any treasonous, rebellious, or subversive acts/omissions.**

Undoubtedly, this is a reasonable standard of conduct demanded of the media outlets. The sanction that may be imposed for breach thereof — suspension, cancellation or revocation of the station's license after an appropriate investigation has sufficiently established that there was a breach — is also reasonable. It cannot be characterized as impermissible punishment which violates freedom of expression.

There is no transgression of the people's right to information on matters of public concern.

With the foregoing disquisition that there was no infringement on freedom of expression, there is no case for violation of the right to information on matters of public concern. Indeed, in the context of the prevailing factual milieu of the case at bench,

[56] NTC Memorandum Circular No. 22-89.

the petitioner's contention can thrive only if there is a showing that the act of the respondents constituted prior restraint.

There is, therefore, no further need to belabor the point.

NTC did not commit grave abuse of discretion when it issued the press release

Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[57] For grave abuse of discretion to be present, petitioner must show that the respondents violated or ignored the Constitution, the laws or existing jurisprudence.[58]

As discussed earlier, respondents, in making the questioned press releases, did not violate or threaten to violate the constitutional rights to free expression and to information on matters of public concern. No grave abuse of discretion can be imputed to them.

One final word. With the benefit of hindsight, it is noted that from the time the assailed press releases were issued and up to the present, the feared criminal prosecution and license revocation never materialized. They remain imagined concerns, even after the contents of the tapes had been much talked about and publicized.

I therefore vote to dismiss the petition for *certiorari* and prohibition.

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[57] *Defensor-Santiago v. Guingona*, 359 Phil. 276, 304 (1998).

[58] *Republic of the Philippines v. COCOFED*, 423 Phil. 735, 774 (2001); *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, 412 Phil. 308, 340 (2001).

EN BANC

[G.R. No. 169245. February 15, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELSON ABON *Y* NOVIDO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; RULES ON APPEAL. — An appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority. It is not a right but a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of law. Recent developments in criminal law and jurisprudence have brought about changes in the rules on appeal, specifically in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment. To clarify the present rules, we shall discuss these developments. Section 3 of Rule 122 of the 2000 Rules on Criminal Procedure x x x provides that where the penalty imposed by the RTC is *reclusion perpetua* or life imprisonment, an appeal is made directly to this Court by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party. On the other hand, a case where the penalty imposed is death will be automatically reviewed by the Court without a need for filing a notice of appeal. However, *Mateo* modified these rules by providing an intermediate review of the cases by the CA where the penalty imposed is *reclusion perpetua*, life imprisonment, or death. Pursuant to *Mateo*'s ruling, the Court issued A.M. No. 00-5-03-SC 2004-10-12, amending the pertinent rules governing review of death penalty cases. x x x Also affecting the rules on appeal is the enactment of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*, which took effect on June 29, 2006. Under Sec. 2 of RA 9346, the imposition of the death penalty is prohibited, and in lieu thereof, it imposes the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code (RPC); or life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC.

Consequently, in the provisions of the Rules of Court on appeals, death penalty cases are no longer operational.

2. ID.; CIVIL PROCEDURE; APPEALS; SUBSTANTIATED FACTUAL FINDINGS OF THE APPELLATE COURT, AFFIRMING THOSE OF THE TRIAL COURT MAY NOT BE REVIEWED ON APPEAL. — It is a settled rule that substantiated factual findings of the appellate court, affirming those of the trial court, are conclusive on the parties and may not be reviewed on appeal.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; RAPE VICTIMS, ESPECIALLY THOSE OF TENDER AGE WOULD NOT CONCOCT A STORY OF SEXUAL VIOLATION OR ALLOW AN EXAMINATION OF THEIR PRIVATE PARTS AND UNDERGO PUBLIC TRIAL, IF THEY ARE NOT MOTIVATED BY THE DESIRE TO OBTAIN JUSTICE FOR THE WRONG COMMITTED TO THEM. — To sustain a conviction for rape, there must be proof of the penetration of the female organ. In this case, the conviction of accused-appellant was anchored mainly on the testimony of the minor victim, AAA. However, accused-appellant casts doubt on AAA's credibility by tagging her as a disturbed child who invented the accusation against him because he maltreated her. This theory deserves scant consideration. Rape victims, especially those of tender age, would not concoct a story of sexual violation, or allow an examination of their private parts and undergo public trial, if they are not motivated by the desire to obtain justice for the wrong committed against them. Moreover, a rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family. Thus, great weight is given to an accusation a child directs against her father.

4. ID.; ID.; ALIBI; WHEN RELIABLE. — [T]he CA correctly disregarded accused-appellant's defense of alibi as follows: x x x "To be reliable, alibi must be supported by credible corroboration, preferably from disinterested witnesses who swear that they saw or were with the accused somewhere else when the crime was being committed. In this case, the appellant's alibi, though corroborated by [his mother], [niece] and [brother-in-law], was not credible for the obvious reason that they were his close relatives, not disinterested persons. Alibi is regarded

as weak if it is established wholly or mainly by the accused himself or his relatives, and so should fail as a defense once the accused is positively identified by the victim herself."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

De Guzman Mariñas Soriano Ugay and Associates Law Offices for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

Of all so called heinous crimes,
none perhaps more deeply provokes feelings of outrage,
detestation and disgust than incestuous rape.[1]

—former Chief Justice Andres R. Narvasa

The credibility of the testimony of a young incestuous rape victim cannot be diminished by an unsupported allegation that she is mentally disturbed. Considering that family honor is at stake, a minor rape victim will not fabricate a story that she was raped by her own father unless it was true.

The Case

This is an automatic review of the June 6, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00507 entitled *People of the Philippines v. Nelson Abon* which affirmed the June 23, 1998 Decision[3] of the Urdaneta City, Pangasinan Regional Trial Court (RTC), Branch 48, convicting accused-appellant Nelson Abon of the crime of qualified rape and sentencing him to suffer the penalty of death.

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[1] *People v. Baculi*, G.R. No. 110591, July 26, 1995, 246 SCRA 756, 758.

[2] *Rollo*, pp. 3-29. Penned by Associate Justice Lucas Bersamin and concurred in by Associate Justices Andres Reyes, Jr. and Celia Librea-Leagoco.

[3] CA *rollo*, pp. 23-46. Penned by Judge Alicia Gonzalez-Decano.

The Facts

On the last week of May 1995, at about 11 p.m., in Binalonan, Pangasinan, accused-appellant entered the room where his daughter, AAA,[4] who was then 13 years old, and his son, BBB, were sleeping. Accused-appellant moved BBB away from AAA, and, thereafter, embraced AAA. He removed AAA's pajama, then his shorts and brief, and went on top of AAA. AAA called her grandmother, who was sleeping at the next room, but the latter was not awakened by AAA's call. Accused-appellant silenced AAA and threatened to strangle her if she made any noise.[5]

Accused-appellant succeeded in inserting his penis inside AAA's vagina, and then made a push and pull movement of his penis inside her vagina for about 20 to 30 minutes. Thereafter, he left.[6]

The following morning, AAA told her grandmother about the incident but the latter dismissed her granddaughter's tale. AAA then went to Cristeta Bayno's house and told her about the molestation. AAA also told Bayno that she was previously raped by her grandfather. Bayno brought AAA to her uncle, who told them to report the matter to the police.[7]

Bayno assisted AAA in reporting the matter to the police. Thereafter, AAA was physically examined and the findings showed that her hymen was already ruptured and she had old lacerations inflicted approximately three months before the date of the examination.[8]

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[4] Pursuant to RA 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real names of the victim and her immediate family members are withheld; instead, fictitious initials are used to represent them to protect their privacy. *See People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] *Rollo,* pp. 14-15.

[6] *Id.* at 18.

[7] *Id.* at 6.

[8] *Id.* at 7.

An Information for qualified rape was filed against Nelson, which reads:

> That on or about the last week of May 1995 at [B]arangay Linmansangan, [M]unicipality of Binalonan, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, said accused who is the father of the victim, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on the person of AAA, a [13-year old woman], against her will.[9]

When arraigned, accused-appellant pleaded not guilty to the crime charged.[10] During the trial, he interposed denial and alibi as his defenses. He alleged that he had been working in Binangonan, Rizal from March 1995 to August 1995. He also claimed going to Binalonan, Pangasinan only once during that period, and that was in June 1995. He did not see his children then because they were in Pozzorubio, Pangasinan where they where studying. Furthermore, he stated that AAA filed the case against him for the reason that he used to whip her very hard on the buttocks with a yard-long piece of wood.[11]

On June 23, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

> Wherefore, the Court sentences [accused-appellant] to suffer death penalty as provided for by Section 11 of Republic Act [No.] 7659 and to pay the amount of [Ph₱] 50,000 as moral damages to the victim AAA aside from paying exemplary damages in the amount of [Ph₱] 30,000 for other fathers not to follow the bad example shown by the accused.
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> SO ORDERED.[12]

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 135056. However, in accordance with the ruling in *People*

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[9] CA *rollo*, p. 10.

[10] *Rollo*, p. 4.

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

[12] *Supra* note 3, at 46.

v. Mateo,[13] this Court, in its September 14, 2004 Resolution, transferred this case to the CA for intermediate review.

The Ruling of the Court of Appeals

The CA affirmed the trial court's judgment of conviction, but it modified the award of damages. The CA upheld the credibility of the complaining witness, AAA. It observed that accused-appellant failed to show any inconsistency in AAA's testimony, and neither did he prove any ill-motive which would prompt AAA to concoct her incest rape story. The appellate court also dismissed accused-appellant's defenses of denial and alibi as these were not supported by trustworthy evidence.

The modification in the award of damages consisted in the grant of Ph₱ 75,000 as civil indemnity and the increase in the award of moral damages to Ph₱ 75,000. The award of exemplary damages was, however, decreased to Ph₱ 25,000.

The Issues

On October 17, 2006, accused-appellant filed a Supplemental Brief before this Court, raising the following issues for our consideration:

1. Whether or not the Honorable Court of Appeals erred in affirming the decision of the court *a quo* finding the appellant guilty beyond reasonable of the crime of qualified rape; [and]

2. Whether or not the Honorable Court of Appeals erred in increasing the amount of damages awarded by the court *a quo*.[14]

The Court's Ruling

The appeal has no merit.

Preliminary Matter: Rules on Appeal

An appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority.[15] It is

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[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[14] *Rollo*, p. 50. Original in capital letters.

[15] BLACK'S *LAW DICTIONARY* (Abridged 7th ed., 2000).

not a right but a mere statutory privilege[16] to be exercised only in the manner and in accordance with the provisions of law.[17]

Recent developments in criminal law and jurisprudence have brought about changes in the rules on appeal, specifically in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment. To clarify the present rules, we shall discuss these developments.

Section 3 of Rule 122 of the 2000 Rules on Criminal Procedure states:

> SEC. 3. *How appeal taken*. — (a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.
>
> (b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.
>
> (c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, *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.

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[16] *Badillo v. Gabo*, G.R. No. 145846, April 3, 2003, 400 SCRA 494, 506; citing *Manalili v. De Leon*, G.R. No. 140858, November 27, 2001, 370 SCRA 625, 630.

[17] *Basuel v. Fact-Finding and Intelligence Bureau*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 123.

(e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

The provision provides that where the penalty imposed by the RTC is *reclusion perpetua* or life imprisonment, an appeal is made directly to this Court by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party. On the other hand, a case where the penalty imposed is death will be automatically reviewed by the Court without a need for filing a notice of appeal.

However, *Mateo*[18] modified these rules by providing an intermediate review of the cases by the CA where the penalty imposed is *reclusion perpetua*, life imprisonment, or death. Pursuant to *Mateo*'s ruling, the Court issued A.M. No. 00-5-03-SC 2004-10-12, amending the pertinent rules governing review of death penalty cases, thus:

Rule 122

Sec. 3. ***How appeal taken.* — (a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be by notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.**

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) **The appeal in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed 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 notice of appeal to the Court of Appeals in accordance with paragraph (a) of this Rule.**

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[18] *Supra* note 13.

(d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.

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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 Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from 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 days after the filing thereof by the stenographic reporter. (Emphasis supplied.)

x x x x x x x x x

Rule 124

Sec. 12. *Power to receive evidence.* — The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three months, unless extended by the Chief Justice. 12(a)

Sec. 13. *Certification or appeal of case to the Supreme Court.* — (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to, the Supreme Court.

(c) **In cases where the Court of Appeals imposes *reclusion perpetua,* life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may**

be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals. (Emphasis supplied.)

Also affecting the rules on appeal is the enactment of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*, which took effect on June 29, 2006. Under Sec. 2 of RA 9346, the imposition of the death penalty is prohibited, and in lieu thereof, it imposes the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code (RPC); or life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC. Consequently, in the provisions of the Rules of Court on appeals, death penalty cases are no longer operational.

Having clarified the rules on appeal in criminal proceedings, we now discuss the substantive issues of the instant case.

Sufficiency of Prosecution Evidence

The present appeal raises issues of facts. It is a settled rule that substantiated factual findings of the appellate court, affirming those of the trial court, are conclusive on the parties and may not be reviewed on appeal.[19] In the present case, a review of the records shows that the RTC and the CA had carefully considered the questions of facts raised, and their decisions are both amply supported by the evidence on record.

To sustain a conviction for rape, there must be proof of the penetration of the female organ.[20] In this case, the conviction of accused-appellant was anchored mainly on the testimony of the minor victim, AAA. However, accused-appellant casts doubt on AAA's credibility by tagging her as a disturbed child who

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[19] *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, G.R. No. 156978, May 2, 2006, 488 SCRA 563, 572; *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 321.

[20] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 319.

invented the accusation against him because he maltreated her.[21] This theory deserves scant consideration. Rape victims, especially those of tender age, would not concoct a story of sexual violation, or allow an examination of their private parts and undergo public trial, if they are not motivated by the desire to obtain justice for the wrong committed against them.[22] Moreover, a rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family. Thus, great weight is given to an accusation a child directs against her father.[23]

The trial and appellate courts extensively discussed the trustworthiness of the victim's testimony describing her father's bestiality against her. We find no reason to overturn their findings.

Moreover, the CA correctly disregarded accused-appellant's defense of alibi as follows:

> The appellant attempted to show, [through a witness, his brother-in-law], that he was at [his brother-in-law's] birthday party held in Binangonan, Rizal on May 27, 1995. Such fact, even if it were true, did not eliminate the possibility of his traveling to Binalonan, Pangasinan anytime after May 27, 1995. x x x
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> x x x x x x x x x
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> To be reliable, alibi must be supported by credible corroboration, preferably from disinterested witnesses who swear that they saw or were with the accused somewhere else when the crime was being committed. In this case, the appellant's alibi, though corroborated by [his mother], [niece] and [brother-in-law], was not credible for the obvious reason that they were his close relatives, not disinterested persons. Alibi is regarded as weak if it is established wholly or mainly by the accused himself or his relatives, and so should fail as a defense once the accused is positively identified by the victim herself.[24]

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[21] *Rollo*, pp. 51-52.

[22] *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 433.

[23] *People v. Pioquinto*, G.R. No. 168326, April 11, 2007, 520 SCRA 712, 720-721.

[24] *Rollo*, pp. 24-25.

Proper Penalty

As regards the penalty imposed, in view of the effectivity of RA 9346, the penalty of death is reduced to *reclusion perpetua*, without eligibility for parole.

Also, we find that the increased amount of damages awarded by the CA is proper and is consistent with recent jurisprudence on the matter.[25]

WHEREFORE, the June 6, 2005 Decision of the CA in CA-G.R. CR-H.C. No. 00507, finding accused-appellant guilty beyond reasonable doubt of qualified rape is *AFFIRMED* with the *MODIFICATION* that the penalty of death imposed on accused-appellant is *REDUCED* to *RECLUSION PERPETUA* without eligibility for parole pursuant to RA 9346.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Nachura, Reyes, and *Leonardo-de Castro, JJ.*, concur.

Chico-Nazario, J., on official leave.

FIRST DIVISION

[G.R. Nos. 174902-06. February 15, 2008]

ALFREDO R. ENRIQUEZ, GENER C. ENDONA, and RHANDOLFO B. AMANSEC, *petitioners, vs.* **OFFICE OF THE OMBUDSMAN,** *respondent.*

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[25] *See People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PETITION FOR A WRIT OF *MANDAMUS*, WHEN PROPER. — Ordinarily, a petition for a writ of *mandamus* is proper to compel the public official concerned to perform a ministerial act which the law specifically enjoins as a duty resulting from an office, trust or station. However, it is inaccurate to say that the writ will never issue to control the public official's discretion. Our jurisprudence is replete with exceptions to that rule. Thus, this Court held that if the questioned act was done with grave abuse of discretion, manifest injustice or palpable excess of authority, the writ will be issued to control the exercise of such discretion. Likewise, *mandamus* is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when mandated by the Constitution. Thus, a party to a case may demand expeditious action from all officials who are tasked with the administration of justice.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; EXPLAINED. — "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies," so the Constitution declares in no uncertain terms. This right, like the right to a speedy trial, is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays. In a number of cases, this Court ruled that the right to a speedy disposition of a case is a relative or flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are the length of the delay, the reasons for the delay, the aggrieved party's assertion or failure to assert such right, and the prejudice caused by the delay.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us for resolution is a petition for *mandamus*[1] filed by Alfredo R. Enriquez, Gener C. Endona and Rhandolfo B. Amansec, petitioners, praying that the Office of the Ombudsman, respondent, be ordered to dismiss the following administrative and criminal cases against them:

1. OMB-ADM-0-00-0415, entitled "*Fact-Finding and Intelligence Bureau vs. Alfredo R. Enriquez, Enrico V. Enriquez, Edgardo V. Castro, Rachel E. Saldariega, Rhandolfo B. Amansec and Ricardo R. Arandilla*, for violation of Section 4(a) of Republic Act No. 6713, otherwise known as The Code of Conduct and Ethical Standards for Public Officials and Employees, and Section 22 (a), (c), (i), (k) and (t), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, The Administrative Code of 1987";

2. OMB-ADM-0-00-0416, entitled "*Fact-Finding and Intelligence Bureau vs. Alfredo R. Enriquez, Rachel E. Saldariega, Rhandolfo B. Amansec, Ricardo R. Arandilla, Edilberto Feliciano and Cynthia T. Ignacio*, for dishonesty and grave misconduct";

3. OMB-ADM-0-00-0417, entitled "*Fact-Finding and Intelligence Bureau vs. Alfredo R. Enriquez, Ricardo F. Arandilla, Edilberto Feliciano, Cynthia T. Ignacio, Gener C. Endona, Macario dela Pena and Rosalinda G. Alonzo*, for gross neglect of duty, inefficiency, incompetence in the performance of official duties, non-compliance with the requirements of Republic Act No. 7718, as amended, and its implementing rules and regulations";

4. OMB-0-00-0873, entitled "*Fact-Finding and Intelligence Bureau vs. Alfredo R. Enriquez, Enrico V. Enriquez, Edgardo C. Castro, Rachel E. Saldariega, Rhandolfo B. Amansec*

[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

and Ricardo R. Arandilla, for violation of Section 3(b) and (c) of Republic Act No. 3019, as amended"; and

5. OMB-0-00-0874, entitled "*Fact-Finding and Intelligence Bureau vs. Alfredo R. Enriquez, Rachel E. Saldariega, Rhandolfo B. Amansec, Ricardo R. Arandilla, Edilberto Feliciano and Cynthia T. Ignacio*, for violation of Section 3(e) of Republic Act No. 3019, as amended."[2]

The undisputed facts are:

On May 9, 2000, the Fact-Finding and Intelligence Bureau (FFIB), Office of the Ombudsman, filed with the Administrative Adjudication Bureau, same Office, separate Complaints-Affidavits[3] of even date, charging, among others, herein petitioners Alfredo R. Enriquez, Administrator, Land Registration Authority (LRA), Gener C. Endona, LRA Legal Officer and member of the Pre-qualifications, Bids and Awards Committee, and Rhandolfo B. Amansec, Chief, LRA Inspection and Investigation Division, with administrative and criminal offenses enumerated above, in connection with the bidding of the Land Titling Computerization Project of the LRA.

Finding sufficient basis to proceed with the investigation of the complaints, respondent required petitioners to submit their counter-affidavits and controverting evidence.

In their Joint Counter-Affidavit,[4] petitioners vehemently denied the charges.

Thereafter, respondent conducted several hearings.

On June 15, 2001, complainant FFIB filed its Formal Offer of Evidence,[5] to which petitioners filed their Comment dated July 10, 2001.[6]

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[2] Solicitor General's Comment, *Rollo*, pp. 425-427.

[3] Annex "A", Petition, *id.*, pp. 19-24.

[4] Annexes "B", "B-1" and "B-2", *id.*, pp. 25-50, 137-164, 256-279.

[5] Annex "C", *id.*, pp. 339-350.

[6] Annex "D", *id.*, pp. 351-371.

On January 29, 2002, petitioners likewise formally offered their evidence. On April 17, 2002, complainant FFIB filed its Comment thereon.[7]

Petitioners then waited for respondent's resolution on the parties' respective formal offers of evidence, but there was none.

This prompted petitioners, on July 12, 2002, to file a Motion to Set Date for the Simultaneous Filing of Memorandum by Each Party.[8]

Respondent, however, did not act on petitioners' motion.

On December 12, 2002, Edilberto R. Feliciano, one of those charged with petitioners, filed a Motion for Early Resolution[9] expressing alarm over the "inaction of the Office of the Ombudsman," and praying that the cases be resolved immediately considering that all the evidence have been formally offered and the parties' arguments have been submitted.

Despite all these and petitioners' repeated personal follow-ups, still, respondent failed to resolve the cases.

On March 24, 2006, or six (6) years from the filing of the complaints- affidavits and **more than four (4) years after the parties formally offered their evidence on January 29, 2002**, petitioners filed a Motion to Dismiss[10] all the cases against them as respondent's "inordinate delay" constitutes a violation of their constitutional right to a speedy disposition of their cases. They alleged that such delay "has not only besmirched their reputation but also caused them severe anxiety and great and irreparable injustice as they have been denied employment opportunities and retirement benefits rightfully due them."

Significantly, complainant FFIB, despite notice, did not interpose any objection to petitioners' motion to dismiss. Yet, the cases have remained unresolved.

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[7] Solicitor General's Comment, *id.*, p. 430.

[8] Annex "F", Petition, *id.*, pp. 379-380.

[9] Annex "G", *id.*, pp. 381-382.

[10] Annex "H", *id.*, pp. 383-388.

Owing to respondent's "stubborn inaction," petitioners, on October 20, 2006, filed the present petition, invoking their constitutional right to a speedy disposition of their cases. They alleged therein that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not resolving expeditiously the cases without any justification, thereby causing them to suffer grave injustice and agony.

In its Comment,[11] filed through Solicitor General Agnes VST Devanadera, respondent maintains that it did not violate petitioners' right to a speedy disposition of their cases; that petitioners cannot resort to the remedy of *mandamus* because dismissing the administrative and criminal cases against them involves respondent's exercise of discretion; and that respondent did not act with grave abuse of discretion for failing to resolve the cases, contending that "the prosecutors assigned to these cases are merely exercising extreme care in verifying, evaluating and assessing the charges against petitioners to enable them to arrive at a just determination of the cases" and that "the delay in the ongoing review is not vexatious, capricious or oppressive."

The Issues

I.

Whether the petition for *mandamus* is an appropriate remedy.

II.

Whether respondent violated petitioners' constitutional right to a speedy disposition of their cases.

The Court's Ruling

The petition is meritorious.

First Issue:
Mandamus is the Appropriate Remedy

Ordinarily, a petition for a writ of *mandamus* is proper to compel the public official concerned to perform a ministerial

[11] *Id.*, pp. 425-436.

act which the law specifically enjoins as a duty resulting from an office, trust or station.[12] However, it is inaccurate to say that the writ will never issue to control the public official's discretion. Our jurisprudence is replete with exceptions to that rule. Thus, this Court held that if the questioned act was done with grave abuse of discretion, manifest injustice or palpable excess of authority, the writ will be issued to control the exercise of such discretion.[13] Likewise, *mandamus* is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when mandated by the Constitution.[14] Thus, a party to a case may demand expeditious action from all officials who are tasked with the administration of justice.[15]

Under the undisputed facts before us, we hold that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction by failing to resolve the administrative and criminal cases against petitioners even to this day, or a period of almost eight (8) years from the filing of their complaints-affidavits.

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[12] Section 3, Rule 65 of the 1997 Rules of Civil Procedure, as amended; *Lopez, Jr. v. Office of the Ombudsman*, G.R. No. 140529, September 6, 2001, 364 SCRA 569, citing *Roque v. Office of the Ombudsman*, 307 SCRA 104 (1999).

[13] *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394, citing *Chavez v. PCGG*, 307 SCRA 394 (1999); *Lopez, Jr. v. Office of the Ombudsman*, G.R. No. 140529, September 6, 2001, 364 SCRA 569; *Roque v. Office of the Ombudsman*, G.R. No. 129978, May 12, 1999, 307 SCRA 104; *Kant Kwong v. Presidential Commission on Good Government*, No. 79484, December 7, 1987, 156 SCRA 222; *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301; *First Philippine Holdings Corporation v. Sandiganbayan*, G.R. No. 88345, February 1, 1996, 253 SCRA 30; *Pio v. Marcos*, Nos. L-27849 & L-34432, April 30, 1974, 56 SCRA 726; *Antiquera v. Baluyot, et al.*, No. L-3318, May 5, 1952, 91 Phil. 213.

[14] *Licaros v. Sandiganbayan, supra*, citing *Chavez v. PCGG*, *supra*.

[15] *Id.*, citing *Binay v. Sandiganbayan*, 316 SCRA 65 (1999); *Lopez, Jr. v. Office of the Ombudsman, supra*, citing *Cadalin v. POEA's Administrator*, 238 SCRA 722 (1994).

Second Issue:
The Right to a Speedy Disposition of Cases

"**All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies**," so the Constitution[16] declares in no uncertain terms. This right, like the right to a speedy trial, is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays.[17]

In a number of cases, this Court ruled that the right to a speedy disposition of a case is a relative or flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are the length of the delay, the reasons for the delay, the aggrieved party's assertion or failure to assert such right, and the prejudice caused by the delay.[18]

In determining whether these factors exist in the instant cases, let us first examine the constitutional and statutory mandate, powers and duties of respondent.

Respondent was constitutionally created to be the "protector of the people," with the expressed mandate that it "shall **act promptly on complaints** filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants **in order to promote efficient service by the Government to the people**."[19]

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[16] Section 16, Article III (Bill of Rights).

[17] *Dela Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001, 360 SCRA 478.

[18] *Id.*, citing *Binay v. Sandiganbayan*, 316 SCRA 65 (1999); *Castillo v. Sandiganbayan*, 328 SCRA 69, 76 (2000).

[19] Sections 5 and 12, Article XI of the 1987 Constitution; Section 13 of Republic Act No. 6770.

To attain its mandate, Sections 15 and 16 of Republic Act No. 6770 (The Ombudsman Act of 1989) bestowed upon respondent broad and tremendous powers and functions generally categorized as follows: investigatory power, prosecutory power, disciplinary power, contempt power, public assistance functions, authority to inquire and obtain information, and function to adopt, institute and implement preventive measures, thus:

SEC. 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) **Investigate and prosecute** on its own or on complaint by any person, **any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient**. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) **Direct**, upon complaint or at its own instance, **any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof**, as well as any government-owned or controlled corporations with original charter, **to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties**;

(3) **Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law**, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; **or enforce its disciplinary authority** as provided in Section 21 of this Act: *Provided,* That **the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer**;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement

or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: *Provided*, That the Ombudsman under its rules and regulations may determine what cases may not be made public: *Provided, further*, That any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) **Determine the causes of inefficiency**, red tape, **mismanagement**, fraud, and corruption in the Government, **and make recommendations for their elimination and the observance of high standards of ethics and efficiency**;

(8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) **Punish for contempt in accordance with the Rules of Court** and under the same procedure and with the same penalties provided therein;

(10) **Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided**;

(11) **Investigate and initiate the proper action** for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 **and the prosecution of the parties involved therein**.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses, as well as complaints involving large sums of money and/or properties.

SEC. 16. *Applicability*. — **The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and non-feasance** that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office. (Underscoring supplied)

These powers, functions and duties are aimed to enable respondent to be "**a more active and effective agent of the people in ensuring accountability in public office**."[20] Unfortunately, respondent has transgressed its constitutional and statutory duties. When the Constitution enjoins respondent to "**act promptly**" on any complaint against any public officer or employee, it has the concomitant duty to **speedily resolve** the same. But respondent did not act promptly or resolve speedily petitioners' cases. The Rules of Procedure of the Office of the Ombudsman requires that the hearing officer is given **a definite period of "not later than thirty (30) days" to resolve the case after the formal investigation shall have been concluded**.[21] Definitely, respondent did not observe this 30-day rule.

Here, respondent did not resolve the administrative and criminal cases against petitioners **although the investigation of the said cases had long been terminated when the latter formally offered their evidence way back on January 29, 2002**. In fact, due to respondent's inaction, petitioners, on March 24, 2006 or **more than four (4) years from January 29, 2002**, filed a motion praying the immediate dismissal of all the cases against them, contending that respondent's "inordinate delay" in resolving them constitutes a violation of their constitutional right to a speedy disposition of their cases. Significantly, **this motion was never resisted by complainant FFIB. Nonetheless, respondent did not even bother to act on the motion.**

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[20] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[21] Section 6, Rule III of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman) provides:

SEC. 6. *Rendition of decision*. — **Not later than thirty (30) days** after the case is declared submitted for resolution, the Hearing Officer shall submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsman and Deputy Ombudsman concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority. Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein.

Likewise, it did not inform petitioners why the cases remain unresolved.

It is unfortunate that while petitioners exerted diligent efforts by filing several motions urging respondent to resolve their cases speedily, respondent, up to now, refuses to take action thereon. Clearly, respondent's inaction does not only violate petitioners' right to speedy disposition of their cases guaranteed by the Constitution, but is also opposed to **its role as the vanguard in the promotion of efficient service by the government to the people and in ensuring accountability in public office**. Considering that respondent is tasked to "**determine the causes of inefficiency . . . in the Government, and make recommendations for (its) elimination and the observance of high standards of ethics and efficiency,**"[22] its prolonged delay is manifestly a violation of due process.

Respondent's belated excuse, as alleged in its Comment on the present petition, that the prosecutors assigned to these cases are still reviewing and evaluating them with extreme care to arrive at a just determination is not only unreasonable but also an afterthought. This same excuse was rejected by this Court in *Duterte v. Sandiganbayan*,[23] thus:

> On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could justify the four-year delay in terminating its investigation. Its excuse for the delay — the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail — has lost its novelty and is no longer appealing, as was the invocation in the *Tatad* case.

In *Tatad v. Sandiganbayan*,[24] this Court dismissed the Informations pending before the Sandiganbayan, holding that the "inordinate delay of three (3) years in terminating the preliminary investigation and in filing the Informations violated the constitutional right of the petitioner to due process and to

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[22] Section 15, par. 7, Republic Act No. 6770 (The Ombudsman Act of 1989).

[23] G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[24] Nos. 72335-39, March 21, 1988, 159 SCRA 70.

a speedy disposition of the cases against petitioner." This Court ruled:

> We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Right (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official.

Similarly, in *Roque v. Office of the Ombudsman*,[25] this Court held that the failure of the Office of the Ombudsman to resolve a complaint that has been pending for six (6) years is clearly violative of the rights of petitioners to due process and to a speedy disposition of the cases against them. Thus, the complaints against petitioners were dismissed. Significantly, this Court was not even persuaded by respondent's argument that the petition for *mandamus* became moot and academic when the complaints were later resolved by the Office of the Ombudsman and the Informations were filed thereafter, holding that "the same contention was rejected in *Tatad v. Sandiganbayan*, wherein the Court declared that the long and unexplained delay in the resolution of the criminal complaints against petitioners was not corrected by the eventual filing of the Informations."

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[25] *Supra*.

Also, in *Lopez, Jr. v. Office of the Ombudsman*,[26] this Court dismissed the complaints against petitioner due to the failure of the Office of the Ombudsman to resolve the same that have been pending for almost four (4) years, ruling that such delay clearly violates petitioner's constitutional right to speedy disposition of his cases.

These are only some of the cases showing respondent's disregard of the person's constitutional right to a speedy disposition of his case. Sadly, the list of cases is growing. This is alarming. Here, respondent, the very protector of the people, became the perpetrator of the dictum that "justice delayed is justice denied." Indeed, the said dictum is not a meaningless concept that can be taken for granted by those who are tasked with the dispensation of justice.[27] The constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals.[28] The adjudication of cases must not only be done in an **orderly manner** that is in accord with the established rules of procedure, but must also be **promptly decided** to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.[29] The people's respect and confidence in the Office of the Ombudsman are measured not only by its impartiality, fairness, and correctness of its acts, but also by its **capacity to resolve cases speedily**.

WHEREFORE, we *GRANT* the instant petition. The administrative cases, docketed as OMB-ADM-0-00-0415, OMB-ADM-0-00-0416, and OMB-ADM-0-00-0417, as well as the criminal cases, docketed as OMB-0-00-0873 and OMB-0-00-0874, filed against petitioners, are ordered *DISMISSED*.

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[26] *Supra*.

[27] *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394.

[28] Cruz, *Constitutional Law*, 2007 Edition, p. 295.

[29] *Matias v. Plan*, A.M. No. MTJ-98-1159, August 3, 1998, 293 SCRA 532.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[G.R. No. 177927. February 15, 2008]

FLORANTE S. QUIZON, *petitioner, vs.* **HON. COMMISSION ON ELECTIONS (SECOND DIVISION), MANILA, ATTY. ARNULFO H. PIOQUINTO (ELECTION OFFICER, ANTIPOLO CITY) and ROBERTO VILLANUEVA PUNO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE COMMISSION ON ELECTIONS' ISSUANCE OF ITS RESOLUTION ON THE PETITION FOR DISQUALIFICATION PENDING RESOLUTION OF THE PRESENT PETITION FOR *MANDAMUS* RENDERED THE PRESENT PETITION MOOT. — The principal function of the writ of *mandamus* is to command and to expedite, not to inquire and to adjudicate. Here, Quizon prayed that COMELEC be ordered to resolve the petition for disqualification. However, pending resolution of the instant petition for *mandamus*, the COMELEC issued its Resolution on the petition for disqualification rendering the instant case moot. A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount

public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review, none of which are present in the instant case. Hence, since what is sought to be done by COMELEC has been accomplished, there is nothing else that the Court can order the COMELEC to perform.

2. ID.; ID.; ID.; PETITION FAILED TO MEET THE REQUISITES FOR *MANDAMUS*; THE DENIAL OF DUE COURSE OR CANCELLATION OF ONE'S CERTIFICATE OF CANDIDACY IS NOT WITHIN THE ADMINISTRATIVE POWERS OF THE COMMISSION, BUT RATHER CALLS FOR THE EXERCISE OF QUASI-JUDICIAL POWERS. — The petition failed to meet the requisites for *mandamus*. As a general rule, the writ of *mandamus* lies to compel the performance of a ministerial duty. When the act sought to be performed involves the exercise of discretion, the respondent may only be directed by *Mandamus* to act but not to act in one way or the other. The denial of due course or cancellation of one's certificate of candidacy is not within the administrative powers of the Commission, but rather calls for the exercise of its quasi-judicial functions. Hence, the Court may only compel COMELEC to exercise such discretion and resolve the matter but it may not control the manner of exercising such discretion. However, as previously discussed, the issuance of a writ commanding COMELEC to resolve the petition for disqualification will no longer serve any purpose since COMELEC has issued its decision on the matter.

3. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; THE FIFTEEN-DAY PERIOD IN SECTION 78 WITHIN WHICH TO DECIDE A PETITION FOR DISQUALIFICATION AND CANCELLATION OF CERTIFICATE OF CANDIDACY IS MERELY DIRECTORY. — Section 78 of the Omnibus Election Code provides that petitions to deny due course or cancel a certificate of candidacy should be resolved, after due notice and hearing, not later than fifteen days before the election. In construing this provision together with Section 6 of R.A. No. 6646 or The Electoral Reforms Law of 1987, this Court declared in *Salcedo II v. COMELEC* that the fifteen-day period in Section 78 is merely directory. Thus: If the petition is filed within the statutory

period and the candidate is subsequently declared by final judgment to be disqualified before the election, he shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or the Comelec shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. **The fifteen-day period in Section 78 for deciding the petition is merely directory**. It has long been settled in *Codilla, Sr. v. de Venecia* that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Puno, the votes cast in his favor cannot be considered stray.

4. ID.; ID.; ID.; TECHNICALITIES SHOULD NOT BE PERMITTED TO DEFEAT THE INTENTION OF THE VOTER, ESPECIALLY SO IF THAT INTENTION IS DISCOVERABLE FROM THE BALLOT ITSELF, AS IN THE PRESENT CASE. — As to the alleged irregularity in the filing of the certificate of candidacy, it is important to note that this Court has repeatedly held that provisions of the election law regarding certificates of candidacy, such as signing and swearing on the same, as well as the information required to be stated therein, are considered mandatory prior to the elections. Thereafter, they are regarded as merely directory to give effect to the will of the people. In the instant case, Puno won by an overwhelming number of votes. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.

5. ID.; ID.; ID.; A CANDIDATE WHO LOST IN AN ELECTION CANNOT BE PROCLAIMED THE WINNER IN THE EVENT THAT THE CANDIDATE WHO WON IS FOUND TO BE INELIGIBLE FOR THE OFFICE HE WAS ELECTED. — Moreover, following *Ocampo v. House of Representatives Electoral Tribunal*, a subsequent disqualification of Puno will not entitle petitioner, the candidate

who received the second highest number of votes to be declared the winner. It has long been settled in our jurisprudence, as early as 1912, that the candidate who lost in an election cannot be proclaimed the winner in the event that the candidate who won is found to be ineligible for the office for which he was elected. The second placer is just that, a second placer — he lost in the elections and was repudiated by either the majority or plurality of voters.

APPEARANCES OF COUNSEL

Juanito R. Dimaano for petitioner.
The Solicitor General for public respondent.
Puno & Puno for R.V. Puno.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for *mandamus* with prayer for preliminary injunction seeks to compel the Commission on Elections (COMELEC) Second Division to resolve the petition and supplemental petition for disqualification and cancellation of certificate of candidacy filed by Florante S. Quizon against Roberto V. Puno.

The facts are as follows:

Petitioner Quizon and private respondent Puno were congressional candidates during the May 14, 2007 national and local elections.

On April 17, 2007, Quizon filed a *Petition for Disqualification and Cancellation of Certificate of Candidacy*[1] against Puno docketed as SPA-07-290. Quizon alleged that Puno is not qualified to run as candidate in Antipolo City for failure to meet the residency requirement prior to the day of election; and that Puno's claim in his Certificate of Candidacy (COC) that he is

[1] *Rollo*, pp. 22-24.

a resident of 1906 Don Celso Tuazon, Valley Golf Brgy. De la Paz, Antipolo City for four years and six months before May 14, 2007 constitutes a material misrepresentation since he was in fact a resident of Quezon City.

On April 24, 2007, Quizon filed a *Supplement*[2] to the petition claiming that Puno cannot validly be a candidate for a congressional seat in the First District of Antipolo City since he indicated in his COC that he was running in the First District of the Province of Rizal which is a different legislative district.[3]

Subsequently, concerned residents of the First District of Antipolo City wrote a letter dated April 27, 2007[4] seeking clarification from the COMELEC on the legal and political implications of the COC of Puno, who was seeking public office in the First District of the Province of Rizal but waging his political campaign in the City of Antipolo, which is a separate and distinct legislative district. They prayed that Puno's COC be declared as invalid and that the same be cancelled.

On June 5, 2007, Quizon filed this Petition for *Mandamus* alleging that the COMELEC had not rendered a judgment on the above-mentioned petitions and that the unreasonable delay in rendering judgment deprived him of his right to be declared as the winner and assume the position of member of the House of Representatives.[5]

Meanwhile, on July 31, 2007, the COMELEC Second Division promulgated its Resolution, thus:

WHEREFORE, premises considered, the instant Petition for Disqualification and Cancellation of the Certificate of Candidacy of respondent Roberto V. Puno is hereby DISMISSED. Respondent is a resident of the 1st District of Antipolo City, and is thus qualified

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

[3] *Id*. at 10.

[4] *Id*. at 30.

[5] *Id*. at 6.

to run as a Member of the House of Representatives of the same district.[6]

Quizon filed a motion for reconsideration with the COMELEC En Banc which remains unresolved up to this date.

In his Comment, Puno argues that the petition for *mandamus* was mooted by the July 31, 2007 Resolution of the COMELEC Second Division. He also alleged that the petition must be dismissed for the act sought to be performed is a discretionary and not a ministerial duty; and for failure of Quizon to show that he is entitled to the writ.

The Office of the Solicitor General agrees that the petition for *mandamus* was mooted by the July 31, 2007 Resolution of the COMELEC Second Division. It likewise posits that any question regarding Puno's qualifications now pertains to the House of Representatives Electoral Tribunal (HRET).

In the instant petition, Quizon prays that the Court order the COMELEC to resolve his pending petition for disqualification.

We dismiss the petition.

The principal function of the writ of *mandamus* is to command and to expedite, not to inquire and to adjudicate.[7] Here, Quizon prayed that COMELEC be ordered to resolve the petition for disqualification. However, pending resolution of the instant petition for *mandamus*, the COMELEC issued its Resolution on the petition for disqualification rendering the instant case moot.

A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the

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[6] *Id*. at 75.

[7] *BPI Family Savings Bank, Inc. v. Manikan*, 443 Phil. 463, 467 (2003).

paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review,[8] none of which are present in the instant case. Hence, since what is sought to be done by COMELEC has been accomplished, there is nothing else that the Court can order the COMELEC to perform.

Moreover, the petition failed to meet the requisites for *mandamus*.

As a general rule, the writ of *mandamus* lies to compel the performance of a ministerial duty. When the act sought to be performed involves the exercise of discretion, the respondent may only be directed by *Mandamus* to act but not to act in one way or the other.[9] The denial of due course or cancellation of one's certificate of candidacy is not within the administrative powers of the Commission, but rather calls for the exercise of its quasi-judicial functions.[10] Hence, the Court may only compel COMELEC to exercise such discretion and resolve the matter but it may not control the manner of exercising such discretion. However, as previously discussed, the issuance of a writ commanding COMELEC to resolve the petition for disqualification will no longer serve any purpose since COMELEC has issued its decision on the matter.

Moreover, petitioner has not adequately shown a well-defined, clear and certain legal right to warrant the granting of the petition. He asserts that the unreasonable delay in resolving the petition deprived him of his right to be proclaimed as the winning candidate since all votes cast in favor of respondent are *stray* due to his invalid candidacy. Accordingly, COMELEC must consider that

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[8] *David v. Macapagal-Arroyo*, G.R. No.171396, May 3, 2006, 489 SCRA 160, 214.

[9] *Sison v. Court of Appeals*, G.R. No. 124086, June 26, 2006, 492 SCRA 497, 508.

[10] *Cipriano v. Commission on Elections*, G.R. No. 158830, August 10, 2004, 436 SCRA 45, 56.

only he and Amarante Velasco were the candidates in the said election and since he received a higher number of votes than Velasco, petitioner argues that he should be proclaimed the winning candidate.

Petitioner's assertion is bereft of merit.

Section 78 of the Omnibus Election Code[11] provides that petitions to deny due course or cancel a certificate of candidacy should be resolved, after due notice and hearing, not later than fifteen days before the election. In construing this provision together with Section 6 of R.A. No. 6646 or The Electoral Reforms Law of 1987,[12] this Court declared in *Salcedo II v. COMELEC*[13] that the fifteen-day period in Section 78 is merely directory. Thus:

> If the petition is filed within the statutory period and the candidate is subsequently declared by final judgment to be disqualified before the election, he shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or the Comelec shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the

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[11] See Sec. 7 of R.A. No. 6646.

[12] Sec. 6. *Effect of Disqualification Case.* — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

See also Resolution No. 7799, *Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 14, 2007 Synchronized National and Local Elections.*

[13] G.R. No. 135886, August 16, 1999, 312 SCRA 447.

suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. **The fifteen-day period in Section 78 for deciding the petition is merely directory.**[14] (Emphasis supplied)

It has long been settled in *Codilla, Sr. v. De Venecia*[15] that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Puno, the votes cast in his favor cannot be considered stray.

As to the alleged irregularity in the filing of the certificate of candidacy, it is important to note that this Court has repeatedly held that provisions of the election law regarding certificates of candidacy, such as signing and swearing on the same, as well as the information required to be stated therein, are considered mandatory prior to the elections. Thereafter, they are regarded as merely directory to give effect to the will of the people.[16] In the instant case, Puno won by an overwhelming number of votes. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.[17]

Moreover, following *Ocampo v. House of Representatives Electoral Tribunal*,[18] a subsequent disqualification of Puno will not entitle petitioner, the candidate who received the second highest number of votes to be declared the winner. It has long been settled in our jurisprudence, as early as 1912, that the candidate who lost in an election cannot be proclaimed the winner

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[14] *Id.* at 454-455.

[15] 442 Phil. 139 (2002).

[16] *Sinaca v. Mula*, G.R. No. 135691, September 27, 1999, 315 SCRA 266, 281.

[17] *Bautista v. Commission on Elections*, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 494.

[18] G.R. No. 158466, June 15, 2004, 432 SCRA 144.

in the event that the candidate who won is found to be ineligible for the office for which he was elected. The second placer is just that, a second placer — he lost in the elections and was repudiated by either the majority or plurality of voters.[19]

Finally, petitioner has other plain, speedy and adequate remedy in the ordinary course of law. After a resolution on the petition for disqualification, a motion for reconsideration may be filed before the COMELEC *En Banc* as what was done by petitioner. Only then can petitioner come before this Court via a petition for *certiorari*.[20] These rules of procedure are not without reason. They are meant to facilitate the orderly administration of justice and petitioner cannot take a judicial shortcut without violating the rule on hierarchy of courts.

Clearly, petitioner failed to show that he met all the requirements for the issuance of the writ of *mandamus*.

WHEREFORE, the petition is *DISMISSED* for lack of merit.

SO ORDERED.

Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.*, concur.

Puno, C.J., no part.

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[19] *Id*. at 149-150.

[20] Article IX-A, Section 7; Article IX-C, Section 3.

THIRD DIVISION

[A.M. No. MTJ-07-1664. February 18, 2008]
(Formerly OCA IPI No. 05-8-244-MTC)

RE: ADMINISTRATIVE MATTER NO. 05-8-244-MTC (records of cases which remained in the custody of Retired Judge ROMULO G. CARTECIANO, Municipal Trial Court, Los Baños, Laguna)

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; JUDGE'S ACTUATION IS INDICATIVE OF GROSS INEFFICIENCY. — It appears that all the alleged missing records have all been retrieved and accounted for. They were already disposed of by Judge Carteciano or Judge Go; they were not actually missing but only misplaced, or Judge Carteciano overlooked the fact that they were still in his possession. As reported by the OCA, however, Judge Carteciano failed to timely dispose of Civil Cases No. 1459 and No. 1460. Records show that the last hearing was conducted on 8 April 1992 on a Motion for the Issuance of a Writ of Injunction. From then on, until Judge Carteciano's retirement on 29 August 2000, no further action was taken on the said case. What is more, he returned the records of the said cases to the court only after he was directed by Judge Go to return all the records of cases still in his possession. Certainly, Judge Carteciano's actuation is indicative of gross inefficiency.

2. ID.; ID.; AS THE VISIBLE REPRESENTATION OF THE LAW, AND MORE IMPORTANTLY OF JUSTICE, JUDGES MUST BE THE FIRST TO ABIDE BY THE LAW AND WEAVE AN EXAMPLE FOR OTHERS TO FOLLOW. — The judge is the visible representation of the law and, more importantly, of justice. Thus, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid committing even the slightest infraction of the Rules. Canons 2, 6 and 31 of the Canons of Judicial Ethics provides, respectively, that the "administration of justice should be speedy and careful;" that judges "should be prompt in disposing of all matters submitted

to [them], remembering that justice delayed is often justice denied"; and that in the discharge of his judicial duties, a judge "should be conscientious x x x [and] thorough x x x." Rule 3.05 of Canon 3 of the Code of Judicial Conduct expressly directs that a judge should dispose of the court's business "promptly and decide cases within the required period." In this regard, Section 15(1) of Article VIII of the Constitution mandates: (1)All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x three months for all other lower courts. Needless to say, any delay in the determination or resolution of a case, no matter how insignificant the case may seem to a judge, is, at bottom, delay in the administration of justice in general. The suffering endured by just one person — whether plaintiff, defendant or accused — while awaiting a judgment that may affect his life, honor, liberty or property, taints the entire judiciary's performance in its solemn task of administering justice, Inefficient, indolent or neglectful judges are as equally impermissible in the judiciary as the incompetent and dishonest ones. Any of them tarnishes the image of the judiciary or brings it to public contempt, dishonor or disrespect and must then be administratively dealt with or criminally prosecuted, if warranted, and punished accordingly.

3. ID.; ID.; JUDGE RENEGED ON HIS DUTY TO PRESERVE THE INTEGRITY, COMPETENCE AND INDEPENDENCE OF THE JUDICIARY AND MAKE THE ADMINISTRATION OF JUSTICE MORE EFFICIENT; JUDGE'S CONDUCT IS VIOLATIVE OF THE CODE OF JUDICIAL CONDUCT WHICH HE IS BOUND AS A JUDGE. — Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence and independence of the judiciary and make the administration of justice more efficient. Time and again, we have stressed the need to strictly observe this duty so as not to negate our efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued our courts. Judge Carteciano reneged on this duty. Judge Carteciano should have known that if his caseload, additional assignments or designations, health reasons or other factors prevented the timely disposition of his pending cases, all he had to do was to ask this Court for a reasonable extension of time to dispose of his cases. The Court, cognizant of the heavy caseloads of some judges and mindful of the difficulties

encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds. More so, respondent Judge failed to file any motion for extension despite the availability of this remedy. He could have asked for an extension of time within which to decide. In *Office of the Court Administrator v. Judge Panganiban*, we held: Neither good faith nor long, unblemished and above average service in the judiciary can fully justify respondent judge's lapses. The Court cannot countenance undue delay in the disposition of cases which is one of the causes of the loss of faith and confidence of our people in the judiciary and brings it into disrepute. x x x. In fine, the explanations proffered by Judge Carteciano failed to absolve him from administrative liability. His collective acts of inefficiency are clearly shown in his inability to carry out his duties with efficacy and alacrity. Verily, the Court cannot brush aside and label his acts as mere oversights and dismiss the charges. Instead, a proportionate penalty must be imposed on Judge Carteciano for conduct violative of the *Code of Judicial Conduct* to which he is bound as a judge.

4. ID.; ID.; JUDGE IS GUILTY OF UNJUSTIFIED DELAY IN RENDERING A DECISION. — We find Judge Carteciano guilty of unjustified delay in rendering a decision in Civil Cases No. 1459 and No. 1460. Under Rule 140, as amended by A.M. No. 01-8-10-SC dated 11 September 2001, undue delay in rendering a decision or order is categorized as less serious charge with the following sanctions: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In the *Report on the Judicial Audit Conducted in the RTC, Branches 29 and 59, Toledo City*, the Court observed the following factors in the determination of the proper penalty for failure to decide a case on time: We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed either fine or suspension from service without pay for such. The fines imposed vary in each case, depending chiefly on the number of case not decided within the reglementary period and other factors, to wit: the presence of aggravating or mitigating circumstances — the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*. x x x. As may be gleaned from

the case above-quoted, several factors shall be considered in imposing the proper penalty, such as: the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc.*

5. ID.; ID.; JUDGE'S INEFFICIENCY AND NEGLECT OF DUTY WAS COMPOUNDED BY ANOTHER ACT OF GRAVER MALFEASANCE WHICH IS REMOVAL OF THE RECORDS OF CASES FROM THE COURT AND KEEPING THEM EVEN AFTER HIS RETIREMENT. — However, that the delay for which Judge Carteciano is found to be liable pertains only to two cases, Civil Cases No. 1459 and 1460; that records also show that in his almost seventeen years of service in the judiciary, he was only previously penalized once in A.M. No. MTJ-02-1409, wherein he was merely fined ₱1,000.00; that he has been blind on the left eye and with partial blindness in the right eye; that he has been suffering from hypertension; that he has prostate problems or illness; and that he has long since retired from service, a reduction of the penalty of fine, among other penalties recommended by the OCA, is in order. However, Judge Carteciano's inefficiency and neglect of duty was compounded by another act of graver malfeasance, *viz*, removal of the records of cases from the court and keeping them even after his retirement. As hereto, it was only after six long years that Judge Carteciano was able to return all the missing records of the cases. The records of Civil Cases No. 1940 and No. 1992 and Criminal Case No. 8154 were returned by him only on 1 February 2006; those in Criminal Cases No. 3501, No. 3502, No. 5584, No. 5585, No. 4140, No. 4112, No. 5943, No. 5944 and No. 5469 were returned even later on 15 February 2206; and those in Criminal Cases No. 3682, No. 3921, No. 3986, No. 4003 and No. 4021 were finally returned only on 6 and 13 March 2006. It appears that they had been disposed of by Judge Carteciano. Section 14 of Rule 136 of the Rules of Court expressly provides that "(n)o record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Further, it must be stressed that Article 226 of the Revised Penal Code punishes any public officer who removes, conceals or destroys documents or papers officially entrusted to him. Proper and efficient court management is the responsibility of the judge — he is the one

directly responsible for the proper discharge of official functions. Thus, he should have returned the records of the cases to the court upon his retirement.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

The administrative case at bar arose from the letter[1] dated 4 November 2003 of Judge Katherine A. Go (Judge Go), Presiding Judge of the Municipal Trial Court (MTC), Los Baños, Laguna, which informed the Office of the Court Administrator (OCA) that during a physical inventory of records in her court, she discovered that there were records of cases which remained in the possession of former Presiding Judge Romulo G. Carteciano (Judge Carteciano). Judge Carteciano was the presiding judge of MTC, Los Baños, Laguna, until his compulsory retirement on 29 August 2000.

On 4 November 2003, Judge Go informed the OCA that during a physical inventory of records in her court, she discovered that there were records of cases which remained in the possession of former Judge Carteciano who had already compulsorily retired from the service on 29 August 2000. Acting on her inquiry, the OCA directed Judge Go to issue an order directing Judge Carteciano to immediately return to the court the case records in his possession. A number of months passed and still Judge Carteciano failed to comply with Judge Go's order.

Judge Go also claimed that Judge Carteciano, despite his retirement, had the habit of returning records to the court on a piecemeal basis with an attached draft decision despite the fact that the case had been submitted for decision years before, expecting the incumbent judge to just sign his draft. She reported that Judge Carteciano recently returned to the court the case records of Civil Cases No. 1459 and No. 1460, which showed that the last action taken was way back on 8 April 1992 when a hearing was held on a Motion for the Issuance of a Writ of

[1] *Rollo,* p. 6.

Injunction, after which no further action was taken on the said cases.

In a Resolution[2] dated 28 September 2005, the Court, upon the recommendation of the OCA, directed Judge Carteciano to (a) explain, within 10 days from receipt, why no action should be taken against him for failure to return to the court the records of cases which were in his possession prior to his compulsory retirement; and (b) return the records which were still in his possession within the same period. Judge Go was also directed to cause the inventory of records of cases pending in the aforesaid court using the previous and current semestral docket inventory of cases in order to determine the cases which were still in the custody of Judge Carteciano, and to report to the court whether Judge Carteciano had really fully complied with the court directives, within 10 days from Carteciano's compliance.

In a letter[3] dated 25 November 2005, Judge Carteciano denied having in his possession the records of Criminal Cases No. 3501, No. 3682, No. 3921, No. 3986, No. 4003, No. 4021, No. 4140, No. 4112, No. 4209, No. 5984, No. 5943, No. 5944, and No. 6154, and of an undetermined number of civil cases. He explained that he had repeatedly informed the MTC personnel that the above-mentioned cases were not in his possession and custody, as they could have been just misplaced in the *bodega* files for old cases. He presumed that everything was in order, as he did not receive any follow-up call from the court since then.

While admitting taking machine copies of pertinent records of cases to facilitate the issuance of pre-trial orders and resolutions on pending motions and decisions, especially during the last several months prior to his retirement date, Judge Carteciano explained that his desire to decide, resolve or update his docket of pending cases before his retirement date impelled him to bring home some records because there was no computer in the court office and he had to use his own private personal

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[2] *Id*. at 8.

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

computer and printer at home. He averred that all the records of cases which were acted upon or decided by him had been returned to the court prior to his retirement date, although the records in some civil cases remained with him even after his retirement date which he unwittingly thought had been included among those returned. He also alleged that he was blind on the left eye and with partial blindness of the right, and was suffering from hypertension, prostate illness and, lately, from suspected malignant kidney cyst, all of which had greatly weakened him physically and heavily deterred his normal activities.

In her letter[4] dated 27 January 2006, Judge Go informed the court that she had directed her staff to conduct a physical inventory of all the records presently in the possession of the court, using as basis the last semestral report accomplished by Judge Carteciano and the first semestral report done under Judge Amy Melba S. Belulia (Judge Belulia), who immediately succeeded him as Presiding Judge of the MTC. Upon a comparison of the said reports, she found out that there was a discrepancy of 187 civil cases. She also found out that there were 114 civil cases which remained unresolved and pending but were not included in the semestral report of Judge Belulia.

On 1 March 2006, Judge Go submitted a supplemental report[5] enumerating the cases which were returned by Judge Carteciano. She reported that Judge Carteciano was able to return on 1 February 2006 the case folders of Civil Cases No. 1940 and No. 1992, and Criminal Cases No. 3501, No. 3502, Nos. 5584-85, No. 4140, No. 4112, No. 5943, No. 5944 and No. 5469. She claimed that Judge Carteciano still had possession of the records of about eight criminal cases and an undetermined number of civil cases.

On 3 April 2006, Judge Go submitted a final report[6] on Judge Carteciano's return on 6 and 13 March 2006 of the records in

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[4] *Id.* at 19-20.

[5] *Id.* at 46-47.

[6] *Id.* at 49-50.

five more criminal cases: Criminal Cases No. 3682, No. 3921, No. 3986, No. 4003 and No. 4021. The said cases were already disposed of by Judge Carteciano as there were copies of the decisions already appended thereto.

With respect to the civil cases unaccounted for, Judge Go explained that out of the 187 civil cases previously reported, the court was able to find, after a thorough and exhausting physical inventory, that 116 civil cases were already acted upon by the court and copies of the decisions were already included in the Monthly Report of February 2006. Another physical inventory was conducted by the court to verify if the rest of the civil cases were still in its possession, and it was found that 38 more cases had been disposed of by Judge Carteciano but were not reflected in the semestral report; while the remaining 33 cases were disposed of by Judge Go herself, copies of the orders therein having been appended to the Monthly Report for March 2006. Finally, she reported that all cases deemed missing were all accounted for.

Records also reveal that Judge Carteciano brought home records of cases and failed to return the same even after he had already compulsorily retired.

On 20 November 2006, the OCA found Judge Carteciano guilty of gross inefficiency, grave misconduct and for delay in the disposition of Civil Case No. 1459 and No. 1460 and for taking home the records of cases and failing to return the same even after he had already retired. The OCA recommended[7] the imposition of a ₱40,000.00 fine on Judge Carteciano, to be deducted from his retirement benefits, as it appeared that his retirement papers had not yet been acted upon for failure to comply with some requirements.

While we agree with the findings and recommendation of the OCA that Judge Carteciano should be sanctioned, however, we opt to impose a reduced penalty.

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[7] *Id*. at 85-88.

Initially, it appears that all the alleged missing records have all been retrieved and accounted for. They were already disposed of by Judge Carteciano or Judge Go; they were not actually missing but only misplaced, or Judge Carteciano overlooked the fact that they were still in his possession.

As reported by the OCA, however, Judge Carteciano failed to timely dispose of Civil Cases No. 1459 and No. 1460. Records show that the last hearing was conducted on 8 April 1992 on a Motion for the Issuance of a Writ of Injunction. From then on, until Judge Carteciano's retirement on 29 August 2000, no further action was taken on the said cases. What is more, he returned the records of the said cases to the court only after he was directed by Judge Go to return all the records of cases still in his possession. Certainly, Judge Carteciano's actuation is indicative of gross inefficiency.

As we have often stressed, the judge is the visible representation of the law and, more importantly, of justice. Thus, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid committing even the slightest infraction of the Rules.[8]

Canons 2, 6 and 31 of the Canons of Judicial Ethics provide, respectively, that the "administration of justice should be speedy and careful"; that judges "should be prompt in disposing of all matters submitted to [them], remembering that justice delayed is often justice denied;" and that in the discharge of his judicial duties, a judge "should be conscientious x x x [and] thorough x x x." Rule 3.05 of Canon 3 of the Code of Judicial Conduct expressly directs that a judge should dispose of the court's business "promptly and decide cases within the required period." In this regard, Section 15 (1) of Article VIII of the Constitution mandates:

> (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x three months for all other lower courts.

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[8] *Castillo v. Cortes*, A.M. No. RTJ-93-1082, 25 July 1994, 234 SCRA 398, 402.

Needless to say, any delay in the determination or resolution of a case, no matter how insignificant the case may seem to a judge, is, at bottom, delay in the administration of justice in general. The suffering endured by just one person — whether plaintiff, defendant or accused — while awaiting a judgment that may affect his life, honor, liberty or property, taints the entire judiciary's performance in its solemn task of administering justice. Inefficient, indolent or neglectful judges are as equally impermissible in the judiciary as the incompetent and dishonest ones. Any of them tarnishes the image of the judiciary or brings it to public contempt, dishonor or disrespect and must then be administratively dealt with or criminally prosecuted, if warranted, and punished accordingly.[9]

Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence and independence of the judiciary and make the administration of justice more efficient. Time and again, we have stressed the need to strictly observe this duty so as not to negate our efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued our courts.[10] Judge Carteciano reneged on this duty.

Judge Carteciano should have known that if his caseload, additional assignments or designations, health reasons or other factors prevented the timely disposition of his pending cases, all he had to do was to ask this Court for a reasonable extension of time to dispose of his cases.[11] The Court, cognizant of the heavy caseloads of some judges and mindful of the difficulties encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds. More

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[9] *RE: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 4 and 23, Manila and Metropolitan Trial Court, Branch 14, Manila*, 353 Phil. 199, 217 (1998).

[10] *Office of the Court Administrator v. Javellana*, A.M. No. RTJ-02-1737, 9 September 2004, 438 SCRA 1, 14.

[11] *Office of the Court Administrator v. Judge Noynay, Regional Trial Court, Branch 23, Allen, Northern Samar*, 447 Phil. 368, 373 (2003).

so, respondent Judge failed to file any motion for extension despite the availability of this remedy. He could have asked for an extension of time within which to decide.

In *Office of the Court Administrator v. Judge Panganiban*,[12] we held:

> Neither good faith nor long, unblemished and above average service in the judiciary can fully justify respondent judge's lapses. The Court cannot countenance undue delay in the disposition of cases which is one of the causes of the loss of faith and confidence of our people in the judiciary and brings it into disrepute. x x x.

In fine, the explanations proffered by Judge Carteciano failed to absolve him from administrative liability. His collective acts of inefficiency are clearly shown in his inability to carry out his duties with efficacy and alacrity. Verily, the Court cannot brush aside and label his acts as mere oversights and dismiss the charges. Instead, a proportionate penalty must be imposed on Judge Carteciano for conduct violative of the *Code of Judicial Conduct* to which he is bound as a judge.

All told, we find Judge Carteciano guilty of unjustified delay in rendering a decision in Civil Cases No. 1459 and No. 1460.

Under Rule 140, as amended by A.M. No. 01-8-10-SC dated 11 September 2001, undue delay in rendering a decision or order is categorized as less serious charge with the following sanctions: (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In the *Report on the Judicial Audit Conducted in the RTC, Branches 29 and 59, Toledo City*,[13] the Court observed the following factors in the determination of the proper penalty for failure to decide a case on time:

> We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed

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[12] 343 Phil. 276, 282 (1997).

[13] 354 Phil. 8, 21 (1998).

either fine or suspension from service without pay for such. The fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, to wit: the presence of aggravating or mitigating circumstances — the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*. x x x.

As may be gleaned from the case above-quoted, several factors shall be considered in imposing the proper penalty, such as: the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*.

Considering, however, that the delay for which Judge Carteciano is found to be liable pertains only to two cases, Civil Cases No. 1459 and 1460; that records also show that in his almost seventeen years of service in the judiciary, he was only previously penalized once in A.M. No. MTJ-02-1409,[14] wherein he was merely fined ₱1,000.00; that he has been blind on the left eye and with partial blindness in the right eye; that he has been suffering from hypertension; that he has prostate problems or illness; and that he has long since retired from service, a reduction of the penalty of fine, among other penalties recommended by the OCA, is in order.

However, Judge Carteciano's inefficiency and neglect of duty was compounded by another act of graver malfeasance, *viz*, removal of the records of cases from the court and keeping them even after his retirement. As hereto, it was only after six long years that Judge Carteciano was able to return all the missing records of the cases. The records of Civil Cases No. 1940 and No. 1992 and Criminal Case No. 8154 were returned by him only on 1 February 2006; those in Criminal Cases No. 3501, No. 3502, No. 5584, No. 5585, No. 4140, No. 4112, No. 5943, No. 5944 and No. 5469 were returned even later on 15 February 2006; and those in Criminal Cases No. 3682, No. 3921, No. 3986, No. 4003 and No. 4021 were finally returned only on 6 and 13 March 2006. It appears that they had been disposed of by Judge Carteciano.

[14] *Atty. Oliveros v. Judge Carteciano*, 430 Phil. 1 (2002).

Section 14 of Rule 136 of the Rules of Court expressly provides that "(n)o record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Further, it must be stressed that Article 226 of the Revised Penal Code punishes any public officer who removes, conceals or destroys documents or papers officially entrusted to him.

Proper and efficient court management is the responsibility of the judge — he is the one directly responsible for the proper discharge of official functions.[15] Thus, he should have returned the records of the cases to the court upon his retirement.

IN VIEW WHEREOF, retired Judge Romulo G. Carteciano of Branch 15 of the Municipal Trial Court of Los Baños, Laguna, is found *GUILTY* of *UNDUE DELAY IN THE DISPOSAL OF CASES* and for keeping the records of cases even after his retirement, for which he is meted the fine of *TWENTY THOUSAND PESOS* (₱20,000.00). Let a copy of this resolution be *FORWARDED* to the Office of the Court Administrator for the prompt release of the remaining benefits due the respondent Judge after the appropriate reductions therefrom, unless there exists another lawful cause for withholding the same.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[15] *Abarquez v. Judge Rebosura, supra* note 10 at 36.

FIRST DIVISION

[A.M. No. P-07-2346. February 18, 2008]

RE: LETTER OF JUDGE LORENZA BORDIOS PACULDO, Municipal Trial Court, Branch 1, San Pedro, Laguna, ON THE ADMINISTRATIVE LAPSES COMMITTED BY NELIA P. ROSALES, Utility Worker, Same Court.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; A UTILITY WORKER IS NEITHER AUTHORIZED TO DRAFT A PLEADING OR MOTION NOR RECEIVE MONEY FOR BAIL; TO DO SO, IS NOT MERE OVERZEALOUSNESS BUT AN *ULTRA VIRES* ACT, A USURPATION OF A FUNCTION THAT DOES NOT PERTAIN TO HIS POSITION. — Rosales was a utility worker (messenger/janitor). As such, her functions were limited. A utility worker is neither authorized to draft a pleading or motion nor to receive money for bail. When he does either, it is not mere overzealousness but an *ultra vires* act, a usurpation of function that does not pertain to his position Rosales' reason (that she merely wanted to help without any consideration) is unacceptable. Her contention that it was her obligation as an employee of the court to help litigants who did not know what to do is bereft of merit. While the law does not prohibit charity and benevolence among court personnel, the same are circumscribed if only to preserve the image of the judiciary as an entity beyond suspicion. Indeed, the established norm of conduct for court employees is to maintain a hands-off attitude as far as dealings with party-litigants are concerned. Such an attitude is indispensable to maintain the integrity of the courts and to free court personnel from any suspicion of misconduct, an unacceptable behavior that transgresses the established rules of conduct for public officers.

2. ID.; ID.; ID.; ID.; IT IS DESPICABLE FOR A COURT EMPLOYEE TO MISREPRESENT HERSELF AS ONE WHO COULD INFLUENCE OR, WORSE, MANIPULATE COURT PROCESSES FAVORABLY; NOT RETURNING THE MONEY UNLAWFULLY RECEIVED IS EVEN A

GREATER CAUSE FOR DISCIPLINARY ACTION. — As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Every employee of the judiciary should be an example of integrity, uprightness and honesty. It is despicable that Rosales misrepresented herself to the Rivas couple as one who could influence or, worse, manipulate court processes favorably. Her act of not returning the money which she unlawfully received, however, was an even greater cause for disciplinary action. She acknowledged receipt of the amount yet cleverly omitted to state in her comment whether or not she returned it. She never disputed the statements of Elmer that the money he gave her was never used as cash bail, a fact bolstered by the OCA's finding that she failed to turn over the money intended as bail to an authorized court personnel.

3. ID.; ID.; ID.; ID.; EMPLOYEE'S ACT OF ARROGATING UNTO HERSELF RESPONSIBILITIES THAT WERE CLEARLY BEYOND HER GIVEN DUTIES AS UTILITY WORKER CONSTITUTES GRAVE MISCONDUCT. — The necessity of acting with propriety and decorum is stressed in Canon 1 of the Code of Conduct for Court Personnel. Section 1. Court Personnel shall not use their official position to secure unwarranted benefits, privileges, or exemption for themselves or for others. Misconduct has been defined as any unlawful conduct on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. it generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. As distinguished from simple misconduct, however, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as a element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of other. Rosales undoubtedly arrogated unto herself responsibilities that were clearly beyond her given duties as an employee of the judiciary. Plainly stated, she

committed grave misconduct, the penalty for which is dismissal from the service. Her liability, however, is mitigated by the length of her stay in the service.

4. ID.; ID.; ID.; ID.; THE IMAGE OF THE COURTS OF JUSTICE IS NECESSARILY MIRRORED IN THE CONDUCT EVEN OF MINOR EMPLOYEES. — Once again, this Court takes occasion to restate that the image of the courts of justice is necessarily mirrored in the conduct even of minor employees. It is on this account that it always reminds court personnel that they have no business in getting personally involved in matter directly emanating from court proceedings, unless the law expressly provides or they are ordered to do so, in order to maintain and preserve the good name and standing of the judiciary as a true temple of justice.

R E S O L U T I O N

CORONA, *J.*:

On February 27, 2004, Acting Presiding Judge Dinah Evangeline B. Bandong of the Municipal Trial Court (MTC), Branch 1, San Pedro, Laguna issued a warrant of arrest in Criminal Case Nos. 37861 and 37863[1] against the accused Hilda Rivas.[2] For reason(s) not stated in the letter of Judge Lorenza Paculdo, these cases were assigned to the archives by the MTC on August 30, 2004.[3]

On March 17, 2006 when Elmer Rivas, Hilda's husband, went to the MTC to post bail for Hilda, he was purportedly approached by respondent Nelia P. Rosales, a utility worker in the same court. Rosales assured Elmer that she could facilitate the posting of the bond. Banking on Rosales' assurance, Elmer

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[1] These cases involve four counts of violation of BP 22 (Bouncing Checks Law).

[2] The recommended bail was ₱2,000 for each count.

[3] Letter-complaint addressed to Hon. Christopher Lock, Court Administrator of the Supreme Court, copy furnished Hon. Jose Perez, Deputy, Office of the Court Administrator, Supreme Court, and Hon. Francisco Dizon-Paño, Executive Judge, Regional Trial Court, Branch 93, San Pedro, Laguna, par. 2.

handed to her ₱8,000 in cash for Hilda's bail. She accepted the money but did not issue a receipt.

On March 22, 2006, Hilda filed a "Motion to Revive and Post Bail." Her motion was set for hearing on April 17, 2006. At the hearing, Elmer testified on the following matters: his wife filed a motion to revive and post bail with the assistance of Nelia Rosales; he gave the amount of ₱8,000 to Rosales for the posting of bail; he was not given a receipt despite Rosales' promise to do so; and the money was not used for the bail. Elmer likewise identified Rosales in the same hearing.[4]

In a letter dated May 4, 2006,[5] Judge Lorenza Bordios Paculdo,[6] who presided over the April 17, 2006 hearing, referred Rosales' alleged administrative infraction to the Office of the Court Administrator (OCA). Rosales was required to comment on the complaint.

In her undated comment, Rosales averred that it was Elmer who sought her help.[7] She acknowledged receipt of the amount of ₱8,000[8] and admitted preparing the motion to revive and post bail "[s]ince the case [had] been archived [and] there [was] a need for a motion to revive and post bail."[9] The motion was signed by Hilda and filed with the court.

She added that there was no need for Hilda to post bail as the warrant for her arrest had already been lifted. She further stated that "[her] helping the accused in the process of posting bail without any consideration [was] [to her] an obligation by

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[4] TSN, April 17, 2006, p. 6. The records also showed that the warrant of arrest against Hilda was lifted during this hearing.

[5] Letter-complaint addressed to Hon. Christopher Lock, Court Administrator of the Supreme Court, copy furnished Hon. Jose Perez, Deputy, Office of the Court Administrator, Supreme Court, and Hon. Francisco Dizon-Paño, Executive Judge, Regional Trial Court, Branch 93, San Pedro, Laguna.

[6] Presiding Judge, Municipal Trial Court, Branch 1, San Pedro, Laguna.

[7] Undated Comment of Nelia Rosales, par. 2.

[8] *Id*., par. 3.

[9] *Id*.

any personnel of the court to help litigants who do not know [what] to do under the circumstances."[10]

The records do not show whether or not Rosales returned the money to the Rivas couple. It was, however, indubitable that the money was never used for Hilda's bail. In Rosales' words, she thought "there [would] be no harm and I [had] no intention to his money (sic)."[11]

In its report,[12] the OCA considered Rosales' acts (drafting a motion to revive and post bail and receiving money from a party-litigant to be posted as bail) as usurpation of the functions of a lawyer and a clerk of court. These were highly improper and constituted grave misconduct.

According to the OCA, the imposable penalty for grave misconduct, even for first offenders, is dismissal from the service.[13] Rosales' liability, however, was mitigated by her length of stay in the service (20 years), as well as the fact that she had never been previously charged with any administrative offense. Thus, the OCA recommended that Rosales be suspended from the service for seven months without benefits including leave credits, with a stern warning that the commission of the same or similar acts shall warrant a more severe penalty.[14]

We affirm the findings of the OCA, albeit with modifications as to the penalty recommended.

Rosales was a utility worker (messenger/janitor). As such, her functions were limited to the following:

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[10] *Id.*, last paragraph.

[11] *Supra* note 7, par. 5.

[12] Dated May 21, 2007. Evaluation, Administrative Matter for Agenda, Subject Matter: A.M. 06-5-176-MTC Re: Letter of Judge Lorenza B. Paculdo, MTC Branch 1, San Pedro, Laguna on the administrative lapses allegedly committed by Nelia P. Rosales, Utility Worker, same court, Administrative Supervision of Courts, Supreme Court, p. 4.

[13] Section 52 (A), Revised Uniform Rules on Administrative Cases in the Civil Service, Memorandum Circular No. 19, Series of 1999.

[14] Evaluation, *supra* note 12, p. 5.

2.2.7.1. acts as courier of the Court;
2.2.7.2. maintains and keeps custody of a record book on matters dispatched by him;
2.2.7.3. monitors messages received and/or delivers mail matter to court employees;
2.2.7.4. serves original of record, pleadings/documents as directed by the Branch Clerk of Court, Docket Clerk and Clerk-in-Charge in the strict order of dates in which received and in the correct *expediente*, seeing to it that they are sewn in straight, and that no letterings or parts thereof are stitched;
2.2.7.5. maintains cleanliness in and around the court premises, and
2.2.7.6. performs such other functions as may be assigned by the Presiding Judge and/or Branch Clerk of Court.[15]

A utility worker is neither authorized to draft a pleading or motion nor to receive money for bail. When he does either, it is not mere overzealousness but an *ultra vires* act, a usurpation of function that does not pertain to his position.

Rosales' reason (that she merely wanted to help without any consideration) is unacceptable. Her contention that it was her obligation as an employee of the court to help litigants who did not know what to do is bereft of merit. While the law does not prohibit charity and benevolence among court personnel, the same are circumscribed if only to preserve the image of the judiciary as an entity beyond suspicion. Indeed, the established norm of conduct for court employees is to maintain a hands-off attitude as far as dealings with party-litigants are concerned. Such an attitude is indispensable to maintain the integrity of the courts and to free court personnel from any suspicion of misconduct,[16]

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[15] 2002 REVISED MANUAL FOR CLERKS OF COURT (Vol. 1), Supreme Court Printing Service, pp. 206-207. Par. 2, Evaluation, Administrative Matter for Agenda, Subject Matter: A.M. 06-5-176-MTC *Re: Letter of Judge Lorenza B. Paculdo, MTC Branch 1, San Pedro, Laguna on the administrative lapses allegedly committed by Nelia P. Rosales, Utility Worker, same court,* Administrative Supervision of Courts, Supreme Court, p. 3.

[16] *Alleged Removal of the Bailbond Posted in Criminal Case No. C-67629 Committed by William S. Flores, Utility Aide II, Regional Trial Court, Branch 123, Caloocan City,* A.M. No. P-05-1994, 12 October 2005, 472 SCRA 593.

an unacceptable behavior that transgresses the established rules of conduct for public officers.[17]

As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity.[18] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Every employee of the judiciary should be an example of integrity, uprightness and honesty.[19]

It is despicable that Rosales misrepresented herself to the Rivas couple as one who could influence or, worse, manipulate court processes favorably. Her act of not returning the money which she unlawfully received, however, was an even greater cause for disciplinary action. She acknowledged receipt of the amount yet cleverly omitted to state in her comment whether or not she returned it. She never disputed the statements of Elmer that the money he gave her was never used as cash bail, a fact bolstered by the OCA's finding that she failed to turn over the money intended as bail to an authorized court personnel.

We held in *Mendoza v. Tiongson*:[20]

> [W]hat brings our judicial system into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can be bought and sold, ultimately resulting in the disillusionment of the public. This Court has never wavered in its vigilance in eradicating the so-called 'bad eggs' in the judiciary. And whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel.

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[17] *Id. Castelo v. Florendo*, 459 Phil. 597 (2003); *Office of the Court Administrator v. Nitafan*, 452 Phil. 6 (2003); *Amosco v. Magro*, A.M. No. 439-MTJ, 30 September 1976, 73 SCRA 109.

[18] *Rodriguez v. Eugenio*, A.M. No. P-06-2216, April, 20, 2007; *Hernandez v. Borja*, 312 Phil. 199, 204 (1995).

[19] *Rodriguez v. Eugenio*, *supra* note 18; *Basco v. Gregorio*, 315 Phil. 681, 688 (1995).

[20] *In Re: Affidavit of Frankie Calabines v. Luis N. Gnilo, et al.*, A.M. No. 04-5-20-SC, March 14, 2007; *Mendoza v. Tiongson*, 333 Phil. 510 (1996).

The necessity of acting with propriety and decorum is stressed in Canon 1 of the Code of Conduct for Court Personnel.

> Section 1. Court Personnel shall not use their official position to secure unwarranted benefits, privileges, or exemption for themselves or for others.

Misconduct has been defined as any unlawful conduct on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent.[21]

As distinguished from simple misconduct, however, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[22]

Rosales undoubtedly arrogated unto herself responsibilities that were clearly beyond her given duties as an employee of the judiciary. Plainly stated, she committed grave misconduct, the penalty for which is dismissal from the service. Her liability, however, is mitigated by the length of her stay in the service.[23]

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[21] *Rodriguez v. Eugenio, supra* note 18; *Salazar v. Limeta*, A.M. No. P-04-1908, 16 August 2005, 467 SCRA 27, 34.

[22] *Filoteo v. Calago*, A.M. No. P-04-1815, October 18, 2007; *Vertudes v. Buenaflor*, G.R. No. 153166, 16 December 2005, 478 SCRA 210, 233-234; *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 599.

[23] Rosales started serving in the judiciary on 22 February 1983, and is serving up to the present. Section 53 of the Uniform Rules on Administrative Cases in the Civil Service (M.C. No. 19, series of 1999) provides that length of service can be appreciated as an extenuating, mitigating, aggravating or alternative circumstance.

Once again, this Court takes occasion to restate that the image of the courts of justice is necessarily mirrored in the conduct even of minor employees. It is on this account that it always reminds court personnel that they have no business in getting personally involved in matters directly emanating from court proceedings, unless the law expressly provides or they are ordered to do so, in order to maintain and preserve the good name and standing of the judiciary as a true temple of justice.[24]

WHEREFORE, respondent Nelia P. Rosales is hereby found *GUILTY* of grave misconduct. She is hereby *SUSPENDED* from the service for one year without benefits including leave credits, with a *STERN WARNING* that the commission of the same or similar acts shall warrant dismissal from the service.

Rosales is further ordered to *PAY* the amount of *EIGHT THOUSAND PESOS* (₱8,000) to Elmer Rivas within 10 days from her receipt of this resolution.

Let a copy of this resolution be attached to the personal records of respondent in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[24] *Alleged Removal of the Bailbond Posted in Criminal Case No. C-67629 Committed by William S. Flores, Utility Aide II, Regional Trial Court, Branch 123, Caloocan City*, *supra* note 16; *Pizarro v. Villegas*, 398 Phil. 844 (2000); *Marquez v. Clores-Ramos*, 391 Phil. 11 (2000); *Lim-Arce v. Arce*, A.M. No. P-89-312, 9 January 1992, 205 SCRA 21.

THIRD DIVISION

[G.R. No. 124915. February 18, 2008]

RIZAL SECURITY & PROTECTIVE SERVICES, INC., and/or RUFINO S. ANTONIO, JR., *petitioners, vs.* **HON. DIRECTOR ALEX E. MARAAN, Regional Sheriff of DOLE, Cordillera Administrative Region, and RICO GOMEZ, ROLANDO TUPAS, DETECIO VICENTE, EDWIN TUPAS, ROBERTO RUIZ, RONNIE LEABRES, DENNIS LEABRES, and SANDY FIGER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT LIE IN CASE AT BAR. — *Certiorari* being a remedy narrow in its scope and inflexible in character, it is limited to the issue of jurisdiction and grave abuse of discretion. This is the same rule followed in applying the Supreme Court's power to review labor cases which is limited to the issue of jurisdiction and grave abuse of discretion. As this Court has eloquently explained in *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*: Resort to a special civil action for *certiorari* under Rule 65 of the Rules of Court is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction. ***The respondent acts without jurisdiction if he 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 his authority as determined by law. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction. x x x. This Court has explained the role and function of Rule 65 as an extraordinary remedy in numerous pronouncements, among which is the case of *Caltex Refinery Employees Association v. Brillantes* citing *Flores v. National Labor Relations Commission,* to wit: It should be noted, in the first place, that the instant petition is a special civil action for

certiorari under Rule 65 of the Revised Rules of Court. ***An extraordinary remedy, its use is available only and restrictively in truly exceptional cases — those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction***. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of public respondent NLRC's evaluation of the evidence and factual findings based thereon, which are generally accorded not only great respect but even finality. After a careful scrutiny of petitioners' arguments, this Court sustains the jurisdiction of public respondent DOLE-CAR Director Maraan over CAR00-9507-CI-25 and, thus, finds that the writ of *certiorari* does not lie herein.

2. ID.; ID.; ID.; PETITIONER'S RELIANCE ON RULE II, SECTION 3 OF THE RULES ON THE DISPOSITION OF LABOR STANDARDS CASES IN THE REGIONAL OFFICES IS INAPPROPRIATE; PRIVATE RESPONDENTS WERE STILL EMPLOYEES OF PETITIONERS AT THE TIME THEY INSTITUTED CAR00-95-CI-25 BY FILING A COMPLAINT WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT CORDILLERA ADMINISTRATIVE REGION (DOLE-CAR) REGIONAL OFFICE. — Petitioners' reliance on Rule II, Section 3 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices is inappropriate. While it is true that the quoted provision states that where employee-employer relations have been severed, complaints or claims for payment of monetary benefits fall within the exclusive and original jurisdiction of Labor Arbiters; however, such is not the case in the present Petition. ***To emphasize, at the time private respondents instituted CAR00-9507-CI-25 by filing a complaint with the DOLE-CAR Regional Office, they were still employees of petitioners.*** Private respondents Gomez and Tupas filed the Complaint on ***19 May 1995*** before the DOLE-CAR Regional Office, seeking a routine inspection to be conducted on petitioner Rizal Security relative to underpayment in wages and nonpayment of other benefits Lender the Labor Code. At the time of filing of the Complaint on said date, the employer-employee relationship between private respondents and petitioner Rizal Security had

not yet been severed. As alleged by petitioner Rizal Security itself, deemed as an admission on its part, the employer-employee relations between petitioner Rizal Security and private respondents were terminated on ***1 September 1995, or more than three months after*** the institution of CAR00-9507-CI-25 before the DOLE Regional Office.

3. ID.; ID.; ID.; THE DOLE-CAR DIRECTOR PROPERLY RETAINED JURISDICTION TO HEAR AND DECIDE CAR00-95-CI-25 AND ISSUE THE ASSAILED ORDER PURSUANT TO THE POWER VESTED IN HIM BY ARTICLE 128(b) OF THE LABOR CODE CONSIDERING THAT THERE STILL EXISTED AN EMPLOYER-EMPLOYEE RELATIONSHIP AT THE TIME OF THE FILING OF THE COMPLAINT. — Well-settled is the rule that the jurisdiction of a court over the subject matter of an action is determined by the allegations of the complaint ***at the time of its filing,*** irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Time and again, this Court has held that the allegations in the complaint determine the nature of the action and, consequently, the jurisdiction of the courts. It is but axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint ***is determined*** by the material allegations therein, the character of the relief prayed for, and the law existing ***at the time of the filing of the complaint or petition.*** It has already been established in a plethora of cases that once jurisdiction is vested, the same is retained up to the end of litigation. Neither can it be ousted by subsequent events, although of a character which would have prevented jurisdiction from attaching in the first instance. Even subsequent legislation vesting jurisdiction over such proceedings in another tribunal will not affect such jurisdiction. Considering that it is uncontroverted that there still existed an employer-employee relationship between petitioner Rizal Security and private respondents ***at the time of filing of the complaint on 19 May 1995,*** and that the case is one involving violations of labor standard provisions of the Labor Code, this Court finds that DOLE-CAR Director Maraan properly retained jurisdiction to hear and decide CAR00-9507-CI-25 and issue the assailed Order dated 24 January 1996, pursuant to the power vested in him by Article 128 (b) of the Labor Code.

4. ID.; ID.; ID.; WITHOUT RECEIPT BY PETITIONERS OF THE NOTICE AND COPY OF THE ASSAILED ORDER, THE SAME HAS NOT YET BECOME FINAL AND EXECUTORY AND THE WRIT OF EXECUTION ISSUED PURSUANT THERETO IS PREMATURE AND WITHOUT LEGAL BASIS. — Procedural rules are tools designed to facilitate the adjudication of cases and not defeat justice. While the Court, in some instances, allows a relaxation in the application of the rules, it was never intended to forge a bastion for a violation of due process. And although it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The essence of due process is to provide an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or ***seek a reconsideration of the action or ruling complained of.*** Rule III, Section 17 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices provides that an aggrieved party may file a motion for reconsideration of the Order of the Regional Office within seven calendar days from receipt by him of a copy of said Order. The judgment becomes "final and executory" when the reglementary period to appeal lapses, and no appeal is perfected within such period. In this case, petitioners never had the opportunity to contest the Order of 24 January 1996 considering that they never received a notice of the issuance thereof nor were they provided with a copy of the same. Without receipt by the petitioners of the notice and copy of the Order dated 24 January 1996, the same has not yet become final and executory and the Writ of Execution issued pursuant thereto on 12 March 1996 was premature and without legal basis. This renders the Writ of Execution fatally defective and, thus, null.

5. ID.; ID.; ID.; TO RESOLVE THE ISSUE OF PETITIONER'S SOLIDARY LIABILITY WITH HIS CO-PETITIONER FOR PAYMENT OF THE MONETARY AWARDS GRANTED TO PRIVATE RESPONDENTS WOULD BE INJUDICIOUS AND WOULD PRE-EMPT WHATEVER ACTION THE PUBLIC RESPONDENT DOLE-CAR DIRECTOR MAY TAKE ON CAR00-95-CI-25. — Finally, the Court declines from addressing at this point the question of petitioner Antonio's solidary liability with co-petitioner Rizal Security for the payment of the monetary awards granted to the private

respondents. Considering that the Order dated 24 January 1996 has not yet attained finality and the Writ of Execution dated 12 March 1996 has been quashed by reason thereof, to resolve the last issue now would be injudicious and would pre-empt whatever action public respondent DOLE-CAR Director Maraan may still take on CAR00-9507-CI-25. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly. Thus, for reasons of comity and convenience, our courts of justice will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.
Bernadette B. Badecao for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

The Petition brought before this Court is a special civil action under Rule 65 of the Revised Rules of Court, with petitioners praying for the issuance of a writ of *certiorari* and a temporary restraining order (TRO) enjoining from execution the Order[1] dated 24 January 1996 issued by public respondent Alex E. Maraan, then Department of Labor and Employment (DOLE) Regional Director for the Cordillera Administrative Region (CAR), in CAR00-9507-CI-25.

Petitioner Rizal Security and Protective Service, Inc. (Rizal Security) is a corporation organized under Philippine laws and is doing business as a security agency. Petitioner Rufino S. Antonio, Jr. (Antonio) is the president of the aforesaid corporation. On the other hand, private respondents were formerly employed

[1] Records, pp. 69-75.

by petitioner Rizal Security as security guards detailed at Rainbow End Village in Baguio City.

The instant case arose on 19 May 1995, when private respondents Rico Gomez (Gomez) and Edwin O. Tupas (Tupas), who were then still employed as security guards of petitioner Rizal Security, filed a Complaint with the DOLE-CAR Regional Office, docketed as CAR00-9507-CI-25, to seek assistance regarding petitioners' alleged violation of laws on labor standards, to wit:

1. Illegal deduction of wages
2. Underpayment of night shift differential
3. Underpayment of minimum wage
4. Nonpayment of overtime pay and legal holiday pay
5. Nonpayment of 13th month pay

Pursuant to the visitorial and enforcement powers of the Secretary of Labor and Employment or his duly authorized representative under Article 128 of the Labor Code, as amended, an inspection was conducted on petitioner Rizal Security's establishment by the Labor Inspector on 1 June 1995. The said inspection yielded the following violations as indicated in the Notice of Inspection Results dated 9 October 1995:

1. Underpayment of wages
2. Underpayment of COLA
3. Nonpayment of overtime pay
4. Nonpayment of service incentive leave
5. Underpayment of Night-Shift Differential
6. Frequency of Payment
7. Nonpayment of 13th month pay
8. No emergency medicines[2]

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[2] *Id*. at 40.

Hearings were scheduled by the DOLE-CAR to give petitioners the opportunity to present their side.

In the meantime, two significant events apparently took place.

First, private respondents signed and submitted a resignation letter addressed to the personnel manager of petitioner Rizal Security on 10 July 1995, to be effective 1 September 1995.[3]

And second, a notice of Termination of Services dated 25 July 1995 was sent by Dominador N. Valmonte, Jr., Resident Manager of Rainbow End Village to petitioner Antonio, President of co-petitioner Rizal Security.[4] Through the said Notice, Rainbow End Village informed petitioner Rizal Security of the termination of their Security Services also effective 1 September 1995.

In a hearing conducted on 23 October 1995 before the DOLE-CAR Regional Office, petitioner Rizal Security submitted a Manifestation and Motion assailing the jurisdiction of the DOLE-CAR Regional Office over the case. Petitioner Rizal Security alleged that the DOLE-CAR Regional Office had lost its jurisdiction to try the case considering there was no longer any employer-employee relationship between petitioner Rizal Security and private respondents when the latter ceased to be employees of petitioner Rizal Security due to their resignation effective 1 September 1995.

Thereafter, on 24 January 1996, the DOLE-CAR Regional Office, through public respondent Director Maraan, issued the assailed Order denying petitioner Rizal Security's Manifestation and Motion. It further ordered the payment of the deficiencies owing the private respondents amounting to ₱560,989.70. The Order reads:

> WHEREFORE, in the light of the foregoing, the manifestation and motion filed by the respondent, Rizal Security & Protective Service, through Atty. Salvador M. Solis, is hereby DENIED and is hereby ORDERED to pay the computed deficiencies owing to the

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[3] *Id*. at 51.

[4] *Id*. at 52.

affected Security Guards in the total amount of FIVE HUNDRED SIXTY THOUSAND, NINE HUNDRED EIGHTY-NINE PESOS & 70/100 (₱560,989.70) covering eight (8) guards which is hereto itemized as to the following employees, to wit:

	NAME	TOTAL
1.	Rico E. Gomez	₱ 99,088.125
2.	Rolando Tupas	₱110,377.170
3.	Detecio S. Vicente	₱107,904.92
4.	Edwin Tupas	₱113,532.67
5.	Roberto P. Ruiz	₱110,604.92
6.	Ronnie Llabres	₱ 9,608.25
7.	Dennis Llabres	₱ 6,626.60
8.	Sandy Figer	₱ 3,247.05
		₱560,989.705

This office further holds Mr. Dominador Valmonte, Resident Manager of Rainbow End Village, to be jointly and severally liable pursuant to Articles 107 and 109 of the Labor Code of the Philippines.

In view hereof, respondents Mr. Rufino Antonio of Rizal Security and Protective Service and Mr. Dominador Valmonte, of Rainbow End Village, are directed to pay the above-stated amount within ten (10) calendar days from receipt hereof. Otherwise, this Office shall be constrained to issue a Writ of Execution resulting from non-compliance thereof.[5]

Petitioners deny that a copy of such Order was ever officially sent to their undersigned counsel. According to petitioners' counsel:

Despite the fact that the records of the said case disclose that the appearance of the undersigned as counsel for the petitioner has been duly acknowledged and recognized, no copy of such Order was ever sent officially to the undersigned counsel. The undersigned counsel was able to secure a copy thereof from the DOLE Regional Office in Baguio City only on June 18, 1996.[6]

On 8 May 1996, counsel for petitioners received a copy of the Writ of Execution dated 12 March 1996 issued by public

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[5] *Id*. at 69-70.

[6] *Rollo*, pp. 11-12.

respondent DOLE-CAR Director Maraan ordering the Regional Sheriff to enforce the Order dated 24 January 1996. Pertinent portions of the Writ of Execution are quoted below:

> WHEREAS, a copy of said Order was received by respondent on February 1, 1996.
>
> WHEREAS, the period for appeal has already expired without respondent having perfected an appeal from said decision.
>
> WHEREAS, the Order has now become final and executory but respondent has not yet effected the necessary payments of the Monetary Awards due the employee/s concerned.
>
> NOW THEREFORE, pursuant to the provisions of the Labor Code as amended as well as the Rules in the disposition of Labor Standard Cases in the Regional Office, you are hereby directed to cause Messers. Rufino Antonio/Dominador Valmonte and/or Rizal Security and Protective Service with business address at 37 Rainbow End Village, Tacay Road, Pinsao Proper, Baguio City or wherever they/he/it may be found to pay the amount of FIVE HUNDRED SIXTY THOUSAND NINE HUNDRED EIGHTY-NINE (₱560,989.70) PESOS and 70/100 plus legal fee for execution in the amount of FIVE THOUSAND ONE HUNDRED (₱5,100.00) PESOS from the goods, chattels or other properties of the respondent/s and to tender to the concerned employees through the Department of Labor and Employment their claims as aforementioned.[7]

Petitioners are now asking for the issuance of a writ of *certiorari* and a Temporary Restraining Order to enjoin public respondents from executing the Order of 24 January 1996 and from enforcing the Writ of Execution. Petitioners pray that this Court order that the case be endorsed, on the ground of lack of jurisdiction, from the DOLE-CAR Regional Office to the National Labor Relations Commission (NLRC) and that judgment be rendered annulling and setting aside the 24 January 1996 Order and quashing the 12 March 1996 Writ of Execution.

Petitioners presented the following assignment of errors:

I. THE HONORABLE DOLE REGIONAL DIRECTOR GRAVELY ERRED IN ISSUING THE ORDER DATED

[7] *Id.* at 45.

JANUARY 24, 1996 WITHOUT OR IN EXCESS OF HIS JURISDICTION AND IN NOT ENDORSING THE CASE TO THE APPROPRIATE BRANCH OF THE NATIONAL LABOR RELATIONS COMMISSION FOR HEARING.

II. THE HONORABLE DOLE REGIONAL DIRECTOR GRAVELY ERRED IN ISSUING THE WRIT OF EXECUTION AGAINST PETITIONERS PREMATURELY AND CONTRARY TO LAW OR WITHOUT DUE PROCESS OF LAW.

III. GRANTING FOR THE SAKE OF ARGUMENT THAT THE ORDER DATED JANUARY 24, 1996 IS VALID, THE HONORABLE DOLE REGIONAL DIRECTOR GRAVELY ERRED IN DECLARING PETITIONER RUFINO ANTONIO AS LIABLE JOINTLY AND SEVERALLY FOR THE PAYMENT OF THE MONETARY CLAIMS OF THE PRIVATE RESPONDENTS.

The Petition was initially dismissed by this Court on 24 July 1996 for failure to comply strictly with the Rules of Court in not submitting a certified true copy of the questioned Writ of Execution dated 12 March 1996. However, upon Motion for Reconsideration and compliance with the foregoing requirement, this Court resolved to grant the reconsideration, thus reinstating the Petition.

The pivotal issue to be resolved in this Petition is whether public respondent DOLE-CAR Regional Director Maraan acted without jurisdiction in issuing the Order dated 24 January 1996.

Certiorari being a remedy narrow in its scope and inflexible in character, it is limited to the issue of jurisdiction and grave abuse of discretion.[8] This is the same rule followed in applying the Supreme Court's power to review labor cases which is limited to the issue of jurisdiction and grave abuse of discretion.[9] As this Court has eloquently explained in *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*:[10]

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[8] *San Miguel Foods, Inc. Cebu B-Meg Feed Plant v. Hon. Laguesma*, 331 Phil. 356, 376 (1996).

[9] *Id*.

[10] 380 Phil. 660, 667 (2000).

Resort to a special civil action for *certiorari* under Rule 65 of the Rules of Court is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction. ***The respondent acts without jurisdiction if he 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 his authority as determined by law. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction. x x x.

This Court has explained the role and function of Rule 65 as an extraordinary remedy in numerous pronouncements, among which is the case of *Caltex Refinery Employees Association v. Brillantes*[11] citing *Flores v. National Labor Relations Commission*,[12] to wit:

It should be noted, in the first place, that the instant petition is a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court. ***An extraordinary remedy, its use is available only and restrictively in truly exceptional cases — those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction.*** The sole office of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of public respondent NLRC's evaluation of the evidence and factual findings based thereon, which are generally accorded not only great respect but even finality. (Emphasis supplied.)

After a careful scrutiny of petitioners' arguments, this Court sustains the jurisdiction of public respondent DOLE-CAR Director Maraan over CAR00-9507-CI-25 and, thus, finds that the writ of *certiorari* does not lie herein.

In support of their position, petitioners call the attention of this Court to the fact that Rule II, Section 3 of the Rules on

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[11] G.R. No. 123782, 16 September 1997, 279 SCRA 218, 227.

[12] 323 Phil. 589, 593 (1996).

the Disposition of Labor Standards Cases in the Regional Offices stipulates:

> Section 3. *Complaints where no employer-employee relationship actually exists.* — Where employer-employee relationship no longer exists by reason of the fact that it has already been severed, claims for payment of monetary benefits fall within the exclusive and original jurisdiction of the labor arbiters. Accordingly, if on the face of the complaint, it can be ascertained that employer-employee relationship no longer exists, the case, whether or not accompanied by an allegation of illegal dismissal, shall immediately be endorsed by the Regional Director to the appropriate Branch of the National Labor Relations Commission (NLRC).

It follows, petitioners contend, that where the employer-employee relationship no longer exists by the fact of its severance, claims for payment of monetary benefits fall within the exclusive and original jurisdiction of the Labor Arbiters. Petitioners claim that the supervening event of private respondents' voluntarily resigning from petitioners' employ ***in the course of the proceedings*** in CAR00-9507-CI-25 ***automatically ousted*** public respondent DOLE-CAR Director Maraan of his jurisdiction to continue to hear and determine said case. Petitioners insist that public respondent DOLE-CAR Director Maraan should have desisted from further handling the case and should have instead indorsed it to the appropriate regional branch of the NLRC for further hearing, since the jurisdiction over the same belongs to the Labor Arbiter.

Petitioners' reliance on Rule II, Section 3 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices is inappropriate.

While it is true that the quoted provision states that where employee-employer relations have been severed, complaints or claims for payment of monetary benefits fall within the exclusive and original jurisdiction of Labor Arbiters; however, such is not the case in the present Petition. ***To emphasize, at the time private respondents instituted CAR00-9507-CI-25 by filing a complaint with the DOLE-CAR Regional Office, they were still employees of petitioners.***

Private respondents Gomez and Tupas filed the Complaint on ***19 May 1995*** before the DOLE-CAR Regional Office, seeking a routine inspection to be conducted on petitioner Rizal Security relative to underpayment in wages and nonpayment of other benefits under the Labor Code. At the time of filing of the Complaint on said date, the employer-employee relationship between private respondents and petitioner Rizal Security had not yet been severed. As alleged by petitioner Rizal Security itself, deemed as an admission on its part, the employer-employee relations between petitioner Rizal Security and private respondents were terminated on ***1 September 1995***, or ***more than three months after*** the institution of CAR00-9507-CI-25 before the DOLE Regional Office.

Well-settled is the rule that the jurisdiction of a court over the subject matter of an action is determined by the allegations of the complaint ***at the time of its filing***, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[13] Time and again, this Court has held that the allegations in the complaint determine the nature of the action and, consequently, the jurisdiction of the courts.[14]

It is but axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint ***is determined*** by the material allegations therein, the character of the relief prayed for, and the law existing ***at the time of the filing of the complaint or petition***.[15]

It has already been established in a plethora of cases that once jurisdiction is vested, the same is retained up to the end

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[13] *Encarnacion v. Amigo*, G.R. No. 169793, 15 September 2006, 502 SCRA 172, 178.

[14] *Tolosa v. National Labor Relations Commission*, 449 Phil. 271, 280 (2003).

[15] *Guiang v. Court of Appeals*, G.R. No. 169372, 6 December 2006, 510 SCRA 568, 584-585; *Municipality of Sogod v. Rosal*, G.R. No. L-38204, 24 September 1991, 201 SCRA 632, 637.

of litigation.[16] Neither can it be ousted by subsequent events, although of a character which would have prevented jurisdiction from attaching in the first instance. Even subsequent legislation vesting jurisdiction over such proceedings in another tribunal will not affect such jurisdiction.[17]

Considering that it is uncontroverted that there still existed an employer-employee relationship between petitioner Rizal Security and private respondents ***at the time of filing of the complaint*** on ***19 May 1995***, and that the case is one involving violations of labor standard provisions of the Labor Code, this Court finds that DOLE-CAR Director Maraan properly retained jurisdiction to hear and decide CAR00-9507-CI-25 and issue the assailed Order dated 24 January 1996, pursuant to the power vested in him by Article 128(b) of the Labor Code, which states:

> Art. 128. *Visitorial and Enforcement Power.* —
>
> x x x x x x x x x
>
> (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or ***his duly authorized representatives*** shall have the power to issue ***compliance orders*** to give effect to the labor standards provisions

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[16] *Bernarte v. Court of Appeals*, 331 Phil. 643, 660 (1996), citing the following: *People v. Paderna*, 130 Phil. 317, 323 (1968); *Firemans' Fund Insurance Co. v. Compania General de Tabacos de Filipinos*, 126 Phil. 246, 250-251 (1967); *Insurance Co. of North America v. U.S. Lines Co.*, 123 Phil. 1138, 1140 (1966); *Rizal Surety and Ins. Co. v. Manila Railroad Co.*, 123 Phil. 788, 790 (1966); *Tuvera v. de Guzman*, 121 Phil. 706, 709 (1965); *Lumpay v. Moscoso*, 105 Phil. 968, 972 (1959); *Detective and Protective Bureau, Inc. v. Guevarra*, 101 Phil. 1234 (1957); *Philippine Land-Air-Sea Labor Union (PLASLU), Inc. v. Court of Industrial Relations*, 93 Phil. 747, 752 (1953); *Alejandro v. Francisco*, 70 Phil. 749 (1940); *People v. Pegarum*, 58 Phil. 715, 717 (1933); *Vda. De Pamintuan v. Tiglao*, 53 Phil. 1, 4 (1929).

[17] A recognized exception to this rule is when the statute expressly provides, or is construed to the effect that it is intended to operate upon actions pending before its enactment. Where such retroactive effect is not provided for, statutes altering the jurisdiction of a court cannot be applied to cases already pending prior to their enactment.

of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

Secondary to the issue of jurisdiction is the issue of whether or not public respondent DOLE-CAR Director Maraan acted without or in excess of his jurisdiction in issuing the Writ of Execution dated 12 March 1996.

Petitioners insist that the issuance of the said Writ of Execution was unlawful and premature, without legal basis or due process of law, and implemented against a person not a party litigant.

Petitioners maintain that since the DOLE-CAR Regional Office never furnished petitioners' counsel a copy of the 24 January 1996 Order, then the said Order never became final with respect to them, and cannot be the subject of a Writ of Execution.

Rule II, Section 4 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices provides that notices and copies of orders shall be served on the parties or their duly authorized representatives at their last known office or home addresses or, if they are represented by counsel, through the latter.

This procedure on service of Orders and Decisions as provided under the Rules on the Disposition of Labor Standards Cases in the Regional Offices is in line with the established rule that notice to counsel is notice to party and when a party is represented by counsel, notices should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent.

Petitioners' counsel never received an official copy of the 24 January 1996 Order and was only able to personally secure a copy thereof from the DOLE-CAR Regional Office in Baguio

City on 18 June 1996.[18] The records support this allegation. The following is a quote from an internal DOLE correspondence attached to the records of the case:

> Is it okay with you if we will schedule this for another hearing despite the Dismissal of respondents' petition for *certiorari*?
>
> In the interest of justice respondents did not receive a copy of our Order dated 1/24/96 as it was "returned to sender" by the post office.[19]

A Notice and a copy of the Order dated 24 January 1996 was sent by the DOLE-CAR Regional Office through registered mail to the address of petitioners' then counsel-of-record Atty. Salvador Solis (Atty. Solis) on 29 January 1996. However, the same was not received by Atty. Solis. Indicated on the envelope containing the Notice of the Order dated 24 January 1996 were the following notations by the post office on 5 February 1996:

RTS[20] for better address
No. #5 at Sto. Nino Street
Not at … (illegible)
No such number #5 at Sto. Nino St.
2-5-96

This Court notes that prior notices of the hearings were all sent to the very same address and were received always by petitioners' counsel. It is a source of no little wonder, therefore, why the post office reported that there was "[n]o such number #5 at Sto. Niño St." We could only conclude, at this time, that the notice was not received by the petitioners not through their fault. Thus, we say that the post office failed to deliver the Notice and copy of the 24 January 1996 Order thereto. This fact was admitted by public respondent.[21]

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[18] *Rollo,* p. 12.

[19] Records, p. 130.

[20] Meaning Return-to-Sender.

[21] Records, p. 130.

Private respondents further argue that petitioners may already be deemed notified of the contents of the 24 January 1996 Order for it merely reiterated the findings in the report on the inspection conducted on 1 June 1995 which was served and duly received by petitioners. This Court is very much aware that the nature of proceedings before the DOLE Regional Office shall be summary and non-litigious in nature, and that the technicalities of law and procedure and the rules governing admissibility and sufficiency of evidence obtaining in the courts of law do not strictly apply thereto, subject, only to the requirements of due process.[22]

However, the foregoing is obviously not the notice contemplated under the Labor Code. The inspection report is undeniably a distinct and separate document from the Order dated 24 January 1996. More than merely re-stating the findings on the inspection report, the Order of 24 January 1996 ruled on the Manifestation and Motion of the petitioners assailing the jurisdiction of the DOLE-CAR Regional Office by refusing to dismiss and retaining jurisdiction over CAR00-9507-CI-25.

Procedural rules are tools designed to facilitate the adjudication of cases and not defeat justice.[23] While the Court, in some instances, allows a relaxation in the application of the rules, it was never intended to forge a bastion for a violation of due process. And although it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

The essence of due process is to provide an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or ***seek a reconsideration of the action or ruling complained of***.

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[22] Rule II, Section 12 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices.

[23] *Casolita, Sr. v. Court of Appeals*, 341 Phil. 251, 260 (1997), citing *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996).

Rule III, Section 17 of the Rules on the Disposition of Labor Standards Cases in the Regional Offices provides that an aggrieved party may file a motion for reconsideration of the Order of the Regional Office within seven calendar days from receipt by him of a copy of said Order. The judgment becomes "final and executory" when the reglementary period to appeal lapses, and no appeal is perfected within such period. In this case, petitioners never had the opportunity to contest the Order of 24 January 1996 considering that they never received a notice of the issuance thereof nor were they provided with a copy of the same.

Without receipt by the petitioners of the notice and copy of the Order dated 24 January 1996, the same has not yet become final and executory and the Writ of Execution issued pursuant thereto on 12 March 1996 was premature and without legal basis. This renders the Writ of Execution fatally defective and, thus, null.

Finally, the Court declines from addressing at this point the question of petitioner Antonio's solidary liability with co-petitioner Rizal Security for the payment of the monetary awards granted to the private respondents.

Considering that the Order dated 24 January 1996 has not yet attained finality and the Writ of Execution dated 12 March 1996 has been quashed by reason thereof, to resolve the last issue now would be injudicious and would pre-empt whatever action public respondent DOLE-CAR Director Maraan may still take on CAR00-9507-CI-25. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly. Thus, for reasons of comity and convenience, our courts of justice will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case.[24]

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[24] *Laguna CATV Network, Inc. v. Maraan (DOLE),* 440 Phil. 734 (2002).

WHEREFORE, premises considered, the Court *PARTIALLY GRANTS* the instant Petition and *ISSUES* a *Writ of Certiorari* to quash the Writ of Execution dated 12 March 1996 for being issued prematurely. The Department of Labor and Employment Cordillera Administrative Region is further *DIRECTED* to proceed with CAR00-9507-CI-25 with *DISPATCH*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 125267. February 18, 2008]

EL ORO ENGRAVER CORPORATION, *petitioner, vs.* **COURT OF APPEALS and EVERETT CONSTRUCTION SUPPLY, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; PETITIONER FAILED TO PRESENT ANY OFFICIAL RECEIPT, WHICH IS THE BEST EVIDENCE OF PAYMENT, TO PROVE THAT IT HAD ALREADY PAID THE GOODS TO RESPONDENT; SALES INVOICES ARE NOT EVIDENCE OF PAYMENT BUT ARE ONLY EVIDENCE OF THE RECEIPT OF THE GOODS. — As a general rule, factual findings of the Court of Appeals are binding on this Court. This rule is subject to exceptions, such as when the factual findings of the Court of Appeals and the trial court are contradictory. In this case, the trial court only considered the original copies of the Sales Invoices presented by respondent. The trial court did not consider the Sales Invoices which did not have the signature of petitioner's representative. The trial

court concluded that the merchandise must have been delivered to someone else instead of to petitioner. We have reviewed the records of the case and we are more convinced with the factual findings of the Court of Appeals. Rosita P. Lee (Lee), respondent's Treasurer, explained that it is the company practice to prepare four copies of Sales Invoices. Respondent's delivery personnel would bring two copies of the Sales Invoices at the time of the delivery — the original and a duplicate copy. Both copies were supposed to be signed by petitioner's representative. Respondent's delivery personnel would leave the duplicate copy with petitioner and retain the original copy of the Sales Invoice. Whenever respondent made a collection, it would prepare a Statement of Account, together with the original copies of the Sales Invoices, to petitioner. Considering this practice, it is impossible for respondent to present the original or duplicate copies of the Sales Invoices which bore the signatures of petitioner's representative because they are both in petitioner's possession. The Sales Invoices accepted by the trial court, which bore the signatures of petitioner's representatives, were retained by respondent and not delivered to petitioner because they were not yet due at the time the Statement of Account was prepared. The Court also notes that the Sales Invoices state: "PAYMENT NOT VALID WITHOUT OUR OFFICIAL RECEIPT." The Sales Invoices are not evidence of payment. They are only evidence of the receipt of the goods. The best evidence to prove payment of the goods is the official receipt. Petitioners failed to present any official receipt to prove that it had already paid the goods to respondent.

2. ID.; ID.; ID.; PRINCIPLE OF ESTOPPEL *IN PAIS* IS APPLICABLE IN CASE AT BAR; PETITIONER'S SILENCE FOR FOUR YEARS IS TANTAMOUNT TO ADMISSION OF THE ENTRIES IN THE STATEMENTS OF ACCOUNT SENT BY RESPONDENT. — We agree with the Court of Appeals' observation that petitioner did not object to the entries in the Statements of Account. Petitioner did not do anything despite the clear reminder in the Statements of Account which states: "IMPORTANT: *If this statement does not agree with your record, please notify us at once."* Petitioner remained silent for **four years** from the time it received the Statements of Account until the filing of the case against it. Petitioner did not even bother to respond to the demand letter sent by respondent. Petitioner's silence uncharacteristic of

persons who have just been asked to pay an obligation to which they are not liable. In one case, the petitioner received a statement of account from the respondent without protest, and the petitioner did not controvert the respondent's demand letter. The Court applied estoppel *in pais* where one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. We agree with the Court of Appeals that petitioner's silence for four years is tantamount to admission of the entries in the Statement of Account sent by respondent.

3. ID.; ID.; ID.; PETITIONER RECEIVED THE STATEMENTS OF ACCOUNT AS WELL AS THE SALES INVOICES EVIDENCED BY THE HANDWRITTEN STATEMENT OF PETITIONER'S REPRESENTATIVE WHO WROTE THE WORDS "REC'D ORIGINAL" ON THE STATEMENTS OF ACCOUNT. — The Court of Appeals did not even have to rely on estoppel. Petitioner received the Statements of Account as well as the Sales Invoices as evidence by the handwritten statement of petitioner's representative, Alicia Alcaraz, who wrote the words "rec'd original" on the Statements of Account. Petitioner failed to rebut that it received the Statements of Accounts and the Sales Invoices attached to them. In sum, respondent proved during the trial that it delivered the goods, and that it had not received payment for the goods so delivered. In its Answer With Counterclaim, petitioner alleged that all its purchases from respondent had already been fully paid and satisfied. Petitioner alleged: and by way of SPECIAL and AFFIRMATIVE DEFENSES, defendant avers: 4. That there is no cause of action; 5. That the claim is unenforceable under the statute of fraud; 6. That the claim or demand had been paid, waived and/or otherwise extinguished; 7. That in the alternative, granting arguendo that the defendant received some of the said construction materials, the same are defective and not suitable for the purpose of which they have been purchased and/or some of these materials were not received by the defendant corporation. Consequently, it should not be obliged to pay for the same[.] x x x During the trial, petitioner did not show which of the materials covered by the Sales Invoices had been paid, waived or extinguished, which materials were defective, and

which materials were not received. Petitioner only insisted that it had no obligation to respondent. Thus, petitioner failed to prove that it did not receive the goods, or that it already paid respondent for the foods delivered.

APPEARANCES OF COUNSEL

George L. Howard for petitioner.
Tranquilino F. Meris for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 29 February 1996 Decision[2] and 13 June 1996 Resolution [3] of the Court of Appeals in CA-G.R. CV No. 44782.

The Antecedent Facts

Everett Construction Supply, Inc. (respondent) is engaged in the sale of construction supplies. El Oro Engraver Corporation (petitioner) is one of its customers. Whenever respondent sold merchandise to its customers, it would prepare a Sales Invoice for the transaction in quadruplicate copies. An employee of respondent would bring the original and duplicate copies of the Sales Invoice to the customer for signature upon receipt of the merchandise. Respondent would either append the original copy of the Sales Invoice to the Statement of Account or return it to the customer upon payment of the merchandise.

During the period from August to December 1980 and from January to March 1981, respondent delivered merchandise to

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 21-25. Penned by Associate Justice Romeo J. Callejo, Sr. with Associate Justices Antonio M. Martinez and Pacita Cañizares-Nye, concurring.

[3] *Id*. at 27.

petitioner in the total amount of ₱681,316.70. The transactions were covered by separate Sales Invoices. Petitioner failed to pay its obligations. On 20 February 1981, respondent sent petitioner Statements of Account which indicated the price for each purchase and the totality of petitioner's liability as of that date. Respondent appended to the Statements of Account the original copies of the Sales Invoices for the period from 4 August 1980 to 15 January 1981. Respondent retained the original Sales Invoices which were not yet due when it sent the Statements of Account on 20 February 1981. Petitioner neither responded to the Statements of Account nor made any payment to respondent.

On 12 March 1985, respondent sent petitioner a demand letter for the payment of ₱681,316.70. Petitioner ignored the demand letter. On 25 March 1985, respondent filed an action for Collection of Sum of Money with Damages against petitioner.

The Ruling of the Trial Court

In a Decision[4] dated 30 September 1993, the Regional Trial Court of Kalookan City, Branch 127 (trial court) ruled, as follows:

> WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendant:
>
> 1. Ordering the defendant to pay a total amount of ₱37,055.20 plus 12% [interest per annum] as of the filing of the complaint;
> 2. Ordering the payment of ₱3,016.00 as litigation expenses;
> 3. Ordering defendant to pay attorney's fees in the amount of ₱10,000.00; and
>
> Dismissing the counterclaim.
>
> SO ORDERED.[5]

The trial court ruled that respondent has the burden of showing that a valid debt exists. The trial court did not accept respondent's argument that the original of some Sales Invoices were already with petitioner. The trial court ruled that if the Sales Invoices

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[4] Records, pp. 124-135. Penned by Assisting Judge Cecilio F. Balagot.

[5] *Id*. at 135.

were already with petitioner, it gives rise to the presumption that the debt had been paid. The trial court concluded that petitioner did not receive the goods and such goods might have been delivered to somebody else.

Respondent appealed from the trial court's Decision.

The Ruling of the Court of Appeals

In its 29 February 1996 Decision, the Court of Appeals affirmed with modification the trial court's Decision. The Court of Appeals ruled that while the copies of the Sales Invoices which were not considered by the trial court did not bear the signatures of petitioner's representatives, the merchandise were sold and delivered to petitioner. The Court of Appeals noted that petitioner never objected to nor denied the Statements of Account it received from respondent for more than four years. Petitioner also failed to respond to respondent's demand letter. The Court of Appeals ruled that petitioner's silence for more than four years is an admission of its liability to respondent under the Sales Invoices and the Statements of Account.

The dispositive portion of the Court of Appeals' Decision reads:

> IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is hereby AFFIRMED with the modification that the Appellee is hereby ordered to pay to the Appellant the principal amount of ₱681,316.70 with interests thereon at the rate of 12% per annum, from February 20, 1981 until the said amount is paid in full, and the amount of ₱20,000.00 as and by way of attorney's fees. Without pronouncement as to costs.
>
> SO ORDERED.[6]

Petitioner filed a motion for reconsideration. In its 13 June 1996 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

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[6] *Rollo*, p. 24.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in modifying the trial court's Decision and in increasing petitioner's liability to respondent.

The Ruling of this Court

The petition has no merit.

As a general rule, factual findings of the Court of Appeals are binding on this Court. This rule is subject to exceptions, such as when the factual findings of the Court of Appeals and the trial court are contradictory.[7]

In this case, the trial court only considered the original copies of the Sales Invoices presented by respondent. The trial court did not consider the Sales Invoices which did not have the signature of petitioner's representative. The trial court concluded that the merchandise must have been delivered to someone else instead of to petitioner.

We have reviewed the records of the case and we are more convinced with the factual findings of the Court of Appeals. Rosita P. Lee (Lee), respondent's Treasurer, explained that it is the company practice to prepare four copies of Sales Invoices. Respondent's delivery personnel would bring two copies of the Sales Invoices at the time of the delivery — the original and a duplicate copy. Both copies were supposed to be signed by petitioner's representative. Respondent's delivery personnel would leave the duplicate copy with petitioner and retain the original copy of the Sales Invoice. Whenever respondent made a collection, it would prepare a Statement of Account and it would send the Statement of Account, together with the original copies of the Sales Invoices, to petitioner.[8]

Considering this practice, it is impossible for respondent to present the original or duplicate copies of the Sales Invoices

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[7] *Republic v. Court of Appeals*, G.R. No. 147245, 31 March 2005, 454 SCRA 516.

[8] TSN, 15 July 1986, pp. 7-10.

which bore the signatures of petitioner's representative because they are both in petitioner's possession. The Sales Invoices accepted by the trial court, which bore the signatures of petitioner's representatives, were retained by respondent and not delivered to petitioner because they were not yet due at the time the Statement of Account was prepared.

The Court also notes that the Sales Invoices state: "PAYMENT NOT VALID WITHOUT OUR OFFICIAL RECEIPT."[9] The Sales Invoices are not evidence of payment. They are only evidence of the receipt of the goods. The best evidence to prove payment of the goods is the official receipt. Petitioner failed to present any official receipt to prove that it had already paid the goods to respondent.

We agree with the Court of Appeals' observation that petitioner did not object to the entries in the Statements of Account. Petitioner did not do anything despite the clear reminder in the Statements of Account which states: "IMPORTANT: *If this statement does not agree with your record, please notify us at once*."[10] Petitioner remained silent for **four years** from the time it received the Statements of Account until the filing of the case against it. Petitioner did not even bother to respond to the demand letter sent by respondent. Petitioner's silence is uncharacteristic of persons who have just been asked to pay an obligation to which they are not liable.[11] In one case,[12] the petitioner received a statement of account from the respondent without protest, and the petitioner did not controvert the respondent's demand letter. The Court applied estoppel *in pais* where one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to

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[9] Folder of Exhibits, pp. 1-43.

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

[11] See *Fortune Motors (Phils.) Corp. v. Court of Appeals*, G.R. No. 112191, 7 February 1997, 267 SCRA 653.

[12] *Roblett Industrial Construction Corp. v. Court of Appeals*, G.R. No. 116682, 2 January 1997, 266 SCRA 71.

exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[13] We agree with the Court of Appeals that petitioner's silence for four years is tantamount to admission of the entries in the Statements of Account sent by respondent.

The Court of Appeals did not even have to rely on estoppel. Petitioner received the Statements of Account as well as the Sales Invoices as evidenced by the handwritten statement of petitioner's representative, Alicia Alcaraz,[14] who wrote the words "rec'd original" on the Statements of Account.[15] Lee testified:

> Atty. Meris:
>
> Do you have a proof that the originals of the said invoices are already in the hands of the defendant?
>
> Witness:
>
> Yes, we have given them the statements of accounts which together with the originals as shown by the signature of their employee Alicia Alcaras.
>
> x x x x x x x x x
>
> Atty. Meris:
>
> (to witness)
>
> How do you know that this is the signature of Miss Alcaras?
>
> Witness:
>
> Because I am very familiar with her signature as I have been receiving communications with her frequently during the time that we are having business transaction with the defendant.[16]

Petitioner failed to rebut that it received the Statements of Accounts and the Sales Invoices attached to them. In sum,

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[13] *Id*.

[14] Also referred to as Alicia Alcaras.

[15] Folder of Exhibits, pp. 44-45, *supra* note 10.

[16] TSN, 15 July 1986, p. 8.

respondent proved during the trial that it delivered the goods, and that it had not received payment for the goods so delivered.

In its Answer With Counterclaim,[17] petitioner alleged that all its purchases from respondent had already been fully paid and satisfied. Petitioner alleged:

> and by way of SPECIAL and AFFIRMATIVE DEFENSES, defendant avers:
>
> 4. That there is no cause of action;
>
> 5. That the claim is unenforceable under the statute of fraud;
>
> 6. That the claim or demand had been paid, waived and/or otherwise extinguished;
>
> 7. That in the alternative, granting *arguendo* that the defendant received some of the said construction materials, the same are defective and not suitable for the purpose of which they have been purchased and/or some of these materials were not received by the defendant corporation. Consequently, it should not be obliged to pay for the same[.]
>
> x x x x x x x x x[18]

During the trial, petitioner did not show which of the materials covered by the Sales Invoices had been paid, waived or extinguished, which materials were defective, and which materials were not received. Petitioner only insisted that it had no obligation to respondent. Thus, petitioner failed to prove that it did not receive the goods, or that it already paid respondent for the goods delivered.

WHEREFORE, we *AFFIRM* the 29 February 1996 Decision and 13 June 1996 Resolution of the Court of Appeals in CA-G.R. CV No. 44782. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[17] Records, pp. 10-12.

[18] *Id.* at 11.

SECOND DIVISION

[G.R. Nos. 147773-74. February 18, 2008]

DENNIS MANGANGEY, GABRIEL WANASON, and ANSELMO FORAYO, *petitioners, vs.* **HONORABLE SANDIGANBAYAN (Fifth Division) and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS AND *ESTAFA*; REQUISITES. — To convict for falsification of a public document under Art. 171, paragraph 4 of the RPC, the following requisites must concur: (1) the offender makes in a document untruthful statements in a narration of facts; (2) the offender has a legal obligation to disclose the truth of the facts narrated; (3) the facts narrated by the offender are absolutely false; and (4) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person. The elements of the crime of *estafa* under Art. 315, par. 2 of the RPC are: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business, or imaginary transactions; (2) such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and (4) as a result thereof, the offended party suffered damage.

2. ID.; FALSIFICATION OF PUBLIC DOCUMENT; ESTABLISHED IN CASE AT BAR. — There is no question that petitioners were public officials and employees performing their official duty when they certified in a public document that they inspected and found that the road project was 100% complete per contract specifications. COA Examining Technical Audit Specialist Angluben testified on October 28, 1994 and stated in his affidavit dated August 27, 1987 that the facts in the certificates of inspection and acceptance were false. His testimony was based on the specification of the *pakyaw* contract as evinced by the Individual Project Program for Roads and Bridges in

the Mountain Province, the original Cross-Section of the Program for Banilag-Minoli Road widening and partial relocation road project, and the earthwork computations. According to Angluben, the earthworks dug were only 364.5 cu. M., short of the estimated 4,010 cu. M. He also found that no earthworks were done on the estimated 1,800 cu. M. for removal of slides and overbreaks. The payment of the completed road project was going to be based on the actual volume of the earthworks as clearly specified in the *pakyaw* contract, *vis-à-vis* the estimates of the volume of earthworks in the project. The only conclusion that could be drawn is that the Banilag-Minoli Road was far from finished at the time the certifications were signed by petitioners and when the government paid for the road project. Based on the aforesaid documents and Angluben's testimony, we agree with the Sandiganbayan that Mangangey lied in his declarations. *First*, his erroneous identification of the starting point of the project puts into doubt his claim that he personally inspected the road project. *Second,* we find it suspect that Mangangey, a foreman and a supposed technical expert of the Provincial; Engineer's Office, could not specify the width and the extent of the work done on the road. *Third,* Mangangey's report that the actual earthworks excavated were **exactly the same** as the approximated volume of earthworks to be excavated is highly improbable. He also offered no proof to rebut the results of the technical audit of Angluben. As to the credibility of Angluben, it is a familiar and fundamental doctrine that the determination of the credibility of witnesses is the domain of the trial court as it is in the best position to observe the witnesses' demeanor. Angluben's oral testimony is supported by documentary evidence. Under the circumstances of this case, we are not inclined to depart from this principle. Besides, Forayo and Wanason clearly admitted in their counter-affidavits that they did not personally inspect the project when they affixed their signatures on the Certificate of Inspection and Acceptance. According to Forayo, he merely relied on the late Bernardo's signature. Wanason said he signed because he was threatened by Wandag. Now, as to the requirement that the accused had a legal obligation to disclose the truth of the facts narrated, suffice it to say that a Certificate of Inspection and Acceptance is required in the processing of vouchers for the payment of government projects. Patently, the falsification of this document by the petitioners caused

the release of the payment for an unfinished road at great cost to the Government.

3. ID.; *ESTAFA* THROUGH FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS OF *ESTAFA* LIKEWISE PROVEN; ALTOGETHER, THE ELEMENTS OF THE COMPLEX CRIME OF *ESTAFA* THROUGH FALSIFICATION OF PUBLIC DOCUMENT ARE PRESENT. — Similarly, we find that the charge of *estafa* through falsification of public documents under Art. 315, par. 2(a) of the RPC was likewise proven. The first element, that the accused made false pretenses or fraudulent representations, need not be discussed all over. We have sufficiently gone over this matter. The same holds true with the requirement that these falsification were made during the commission of the crime. The falsified certificates of inspection and acceptance resulted in the government paying for the unfinished project to the disadvantage and injury of the State. Altogether, the elements of the complex crime of *estafa* through falsification of public document are present.

4. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; WHEN PRESENT. — There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest. Conspiracy must be proven as convincingly as the criminal act itself-like any element of the offense charged, conspiracy must be established by proof beyond reasonable doubt. For a co-conspirator to be liable for the acts of the others, there must be intentional participation in the conspiracy with a view to further a common design. Except for the mastermind, it is necessary that a co-conspirator should have performed some overt act-actual commission of the crime itself, active participation as a direct or indirect contribution in the execution of the crime, or moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.

5. ID.; ID.; ID.; CONSPIRACY PROVEN BEYOND REASONABLE DOUBT; THE CONCERTED ACTS OF THE CO-CONSPIRATORS RESULTED IN THE PROCESSING AND RELEASE OF PAYMENT FOR AN UNFINISHED ROAD TO THE DISADVANTAGE AND DAMAGE TO THE GOVERNMENT. — In this case, the ascertained facts and the encashment of the contract payment check obtained through the falsified certificate of inspection prove the commission of the crime. Wandag's guilt has been proven with moral certainly. As co-conspirators of Wandag, petitioners are equally guilty, for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all. Now, had the conspiracy of petitioners been proven beyond reasonable doubt? Recall that petitioners were convicted allegedly on circumstantial evidence. Under Sec. 4, Rule 133 of the Rules of Court on Revised Rules of Evidence, circumstantial evidence would be sufficient to convict the offender if (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 doub. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain that leads to one fair and reasonable conclusion pointing to the accused to the exclusion of all others, as the guilty person, that is, the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty. Based on our earlier discussion, the facts and the circumstances earlier mentioned when strung together duly prove guilt beyond reasonable doubt. Mangangey did not inspect the road project. He could not say where the starting point of the subject project was when he was supposed to have inspected it. He certified that the subject project was completed **exactly** to the approximate volume of excavated earth without making any measurements of the earthworks accomplished. Forayo and Wanason willfully signed the Certified of Inspection and Acceptance, and certified that they personally inspected the road when in fact they did not as admitted in their counter-affidavits during the preliminary investigation. Wandag took flight-a sign of guilt. In addition, it has not been shown that Forayo and Wanason were under duress when they signed the

falsified documents nor that any of their constitutional rights have been violated when they made their declarations in their counter-affidavits. For Forayo and Wanason did not dispute the finding that Mangangey did not inspect the road project. They instead only gave separate excuses on why they signed the certificate. Also, the non-presentation of the investigating officer who conduct the preliminary investigation to testify on the admissions is insignificant as this would only be corroborative. Although petitioners vehemently deny receiving money from Wandag as their share in the loot, this information is of no moment. The concerted acts of the co-conspirators resulted in the processing and release of the payment for an unfinished road to the disadvantage and damage to the government. All these circumstances are based on facts proven by the prosecution pointing to Wandag and petitioners as conspiring to defraud the Government. Finally, we do not agree with petitioners that as lowly employees, they were only prevailed upon by Wandag. As succinctly observed by the Sandiganbayan, if indeed there was duress, this duress is not the exempting circumstance of "irresistible force" in Art. 12, par. 5 of the RPC sufficient to exculpate petitioners. A moral choice was available to them.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioners.

D E C I S I O N

VELASCO, JR., *J.*:

Sometime in October 1986, the Municipality of Paracelis, Mountain Province undertook the widening and partial relocation of the Banilag-Minoli Road. The project was awarded to private contractor Leon Acapen. The description of the work to be done and the terms of the contract included, among others:

1. Roadways and Drainage excavation (removal of slides and overbreaks) [for] 1,800 cubic meters at ₱18.00/cu.m.; and

2. Roadways and Drainage Excavation (widening and construction) for 4.010 cubic meters at ₱20.00/cu.m. x x x

Quantities given above are only approximate and payments of the work shall be based on the quantities actually accomplished and completed which shall be measured and determine[d] accurately and shall be accepted by the Municipal Mayor.[1]

The project was allegedly completed on December 8, 1986 as shown in the Certificate of Inspection and Acceptance dated December 8, 1986. The certificate was prepared and signed by Construction and Maintenance Foreman Dennis Mangangey, petitioner herein, who attested that he personally inspected the project and that it was 100% completed in accordance with the agreed specifications. In another Certificate of Inspection and Acceptance, with the same date, the signatories, namely: Municipal Planning and Development Coordinator Gabriel Wanason, petitioner herein, as the Mayor's representative; Municipal Revenue Clerk Anselmo Forayo, petitioner herein, as the Treasurer's representative; and Bernardo Acapen (now deceased), as the Engineer's representative, all attested that they personally inspected the work done by Leon and found the work in accordance with the approved program of work. The Government subsequently issued a check for Php 106,970 as payment for the project.[2]

In February 1989, a certain Simon Naigsan wrote to the Regional Office of the Commission of Audit (COA) and complained about the anomalies in the construction of the road. The COA Regional Director directed Technical Audit Specialist Engr. Hospicio Angluben to conduct an actual site inspection. Part of his affidavit/ report on the inspection stated:

That Item 105-1 started from Sta. 0+000 to Sta. 4+620, having a total volume of 1,800 cu.m. for excavation; and Item 105-11 started from Sta. +620 to Sta. 6+420, and had a volume of 4,010 cu.m. for excavation;

That all the above works were awarded to Mr. Leon Acapen for ₱112,600.00;

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[1] *Rollo*, pp. 19-20, 46.

[2] *Id*. at 42.

That for Item 105-1 there was no accomplishment and for Item 105-11 there was only 365 cu.m. actually accomplished;

That the contract was certified 100% accomplished and was fully paid for ₱112,600.00, the full amount of the contract.[3]

As an offshoot of the affidavit/report and for failure to complete the Banilag-Minoli Road, provincial officers Engineer Dionisio Padua, Senior Civil Engineer Francisco Tigcangay, and Paracelis Municipal Treasurer Tomas Pocyao, and project contractor Leon were charged before the Sandiganbayan in an Information[4] dated August 14, 1991, alleging that they conspired with evident bad faith to defraud the government in violation of Section 3(e)[5] of Republic Act No. 3019 also known as the *Anti-Graft and Corrupt Practices Act*. The Information was docketed as Crim. Case No. 17007. All the accused in this case were acquitted on October 27, 2000 on Amended Informations to include private contractor Leon as an accused. Amended Informations for this case and Crim. Case No. 17008 were filed by the Office of the Special Prosecutor and a joint trial was held. Criminal Case No. 17007 is not a subject of this petition.

The Amended Information docketed as Crim. Case No. 17008 for *Estafa* thru Falsification of Public Documents charged Paracelis Mayor Matthew Wandag, Municipal Revenue Clerk Forayo, Municipal Planning and Development Coordinator Wanason,

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[3] *Id*. at 48.

[4] Records, pp. 1-2.

[5] 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:

x x x x x x x x x

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

and Construction and Maintenance Foreman of the Office of the Provincial Engineer Mangangey. It reads:

CRIM. CASE NO. 17008

That on or about the 8th day of December, 1986, in the Municipality of Paracelis, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, MATTHEW WANDAG, being then the Municipal Mayor of Paracelis, Mountain Province, ANSELMO FORAYO, being then the Municipal Revenue Clerk of Paracelis, Mountain Province, GABRIEL WANASON, being then the Municipal Planning and Development Coordinator of Paracelis, Mountain Province, and DENNIS MANGANGEY, being then the Maintenance Foreman, Office of the Provincial Engineer, Mountain Province, while in the performance of their official functions taking advantage of their official position, committing the offense in relation to their office and conspiring and confederating with one another, and with accused Leon Acapen, a private contractor, did then and there willfully, unlawfully, feloniously and by means of deceit defraud the Government by making untruthful statements in the Certificate of Inspection and Acceptance signed by accused Gabriel Wanason and Anselmo Forayo in one and by accused Dennis Mangangey in the other and both dated December 8, 1986, and in which they had the obligation to disclose the truth, by making it appear that they have personally inspected the work for the widening and partial relocation of the Banilag-Minoli Road in Paracelis, Mountain Province, consisting of the removal of slides and overbreaks and the widening and construction thereof, and thereafter found the same to have been fully accomplished 100% in accordance with the plans, specifications and requirements thereof, when in truth and in fact, as all the accused well knew, there was no accomplishment on the removal of slides and overbreaks and only 365 cu. m. out of 4,010 cu. m. for the widening and construction had actually been accomplished, and as a result of such false certifications, Leon Acapen was paid the amount of ONE HUNDRED SIX THOUSAND NINE HUNDRED SEVENTY PESOS (₱106,970.00), Philippine Currency, through a check which accused Matthew Wandag subsequently encashed after obtaining the same from accused Leon Acapen and causing the latter to affix his signature thereon, thereby inflicting damage and prejudice to the government in the aforesaid sum.

CONTRARY TO LAW.[6]

[6] Records, pp. 178-180.

All the accused in both cases were arraigned a second time on August 9, 1993, except accused Wandag who took flight to the United States. All pleaded not guilty.

All the accused were acquitted in Crim. Case No. 17007 but convicted in Crim. Case No. 17008 excluding Leon

After a joint trial, the Sandiganbayan, on October 27, 2000, exonerated all the accused in Crim. Case No. 17007 while it convicted petitioners for the crime of *estafa* through falsification of public documents, with the exception of Leon in Crim. Case No. 17008.

In its Decision, the Sandiganbayan found that the signatories of the Certificate of Inspection and Acceptance, namely, Mangangey, Wanason, Forayo, and the late Bernardo, in their own official functions, falsified a public document when they attested that they personally inspected the work of Leon and reported that it was 100% completed in accordance with the plans, specifications, and contract requirements notwithstanding that the work on the aforesaid project was not yet finished. The Sandiganbayan found that petitioners conspired with the accused Wandag to defraud the Government.

The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered, as follows:

1. In Criminal Case No. 17007, accused Dionisio Padua, Francisco Tigcangay, Tomas Pocyao and Leon Acapen are hereby ACQUITTED of the crime of Violation of Section 3(e) of Republic Act 3019, as amended on ground of reasonable doubt. The bail bonds posted for their provisional liberty are ordered cancelled.

2. In Criminal Case No. 17008, accused Dennis Mangangey, Gabriel Wanason and Anselmo Forayo are hereby found GUILTY beyond reasonable doubt as principals of the crime of Estafa through Falsification of Public Documents defined and penalized under Articles 315 and 171 in relation to Article 48 of the Revised Penal Code. Absent any modifying circumstance and applying the Indeterminate Sentence Law, each is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) YEARS of *prision correccional* as minimum, to TWELVE (12) YEARS of *prision mayor*

as maximum, with accessories provided by law; to pay a fine of ₱2,000.00 without subsidiary imprisonment in case of insolvency; to indemnify jointly and severally, the Republic of the Philippines in the amount of NINETY-NINE THOUSAND SIX HUNDRED SEVENTY PESOS (₱99,670.00); and, to pay their proportionate share of the costs. Accused Leon Acapen is hereby ACQUITTED on ground of reasonable doubt. The property bail bond posted by said accused is ordered cancelled.

Let *alias* warrant of arrest be issued against accused Matthew Wandag.

SO ORDERED.[7]

Petitioners' motion for reconsideration was denied for lack of merit. Hence, we have this petition for review under Rule 45, raising the sole issue:

Whether or not, under the facts alleged and proven, the accused may be held liable for the offense of ESTAFA through FALSIFICATION of PUBLIC DOCUMENT.[8]

Our Ruling

We deny the petition.

Prefatorily, the Sandiganbayan acquitted Leon, the purported contractor of the project on ground of reasonable doubt. It noted that during the preliminary investigation, Leon admitted that he was not the real contractor; that he did not do any work on the road; that he signed the Letter of Acceptance printed below the Resolution of Award dated October 21, 1986[9] and the Municipal Voucher; that he received the Ph₱ 106,970 net contract payment;[10] that he indorsed the PNB check payment

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[7] *Rollo*, pp. 67-68. Penned by Associate Justice Minita V. Chico-Nazario (now a member of this Court) and concurred in by Associate Justices Anacleto D. Badoy, Jr. and Ma. Cristina Cortez-Estrada.

[8] *Id*. at 174.

[9] Evidence Folder, Exhibits "B" and "B-1", Formal Offer of Evidence dated November 2, 1994.

[10] *Id*., Exhibit "F".

for Php 106,970 to Wandag; and that it was Wandag who exchanged the said check with a demand draft in Wandag's name, all because he was being threatened and coerced by Wandag. Leon reported these matters as early as January 8, 1987 in an affidavit, shortly after he signed the certificate to the Monitoring Committee of Paracelis, Department of Local Government. His affidavit was appended to his counter-affidavit executed during the preliminary investigation. In our view, Wandag had coerced Leon and used him as a dummy so he could himself get payment for the unfinished road.

Essentially, petitioners contend that the findings of the Sandiganbayan are bereft of factual and legal basis, and that the circumstances relied upon by the Sandiganbayan are insufficient to convict them of *estafa* through falsification of public document. They reason that the facts from which the inferences were derived were not proven. Furthermore, according to petitioners, these circumstances are insufficient to convict them beyond reasonable doubt.

The Sandiganbayan, petitioners claim, relied on the following circumstantial pieces of evidence in convicting petitioners: (1) Mangangey erroneously testified on the starting point of the project; (2) Alfonso Dilog and Franklin Odsey, who Mangangey mentioned in his testimony as his companions during the actual inspection of the project, were not presented to corroborate Mangangey's testimony; (3) during the preliminary investigation, Forayo and Wanason testified that no actual inspection was conducted; (4) Bernardo, before his death, admitted he did not personally inspect the project; (5) during the inspection, Mangangey could not attest to the measurements of the actual volume/quantity accomplished by the contractor in accordance with the *pakyaw* contract; and (6) Wandag took flight to evade prosecution.

As to the first circumstance, petitioners contend that the Sandiganbayan merely speculated that Mangangey did not know the starting point of the road project. They claim that this conclusion of the Sandiganbayan was based alone on the uncorroborated testimony of COA Technical Audit Specialist

Engr. Angluben who said that when he conducted the audit, he was accompanied by Bernardo and Leon, the private contractors and some residents of Paracelis. Yet, petitioners claim these companions of Angluben were not presented in court to corroborate the latter's testimony. They insist that the Sandiganbayan's reliance alone on Angluben's testimony, without corroboration, could not be used against them as this would violate their right to due process.[11]

As to the second, petitioners assert that for the same reason, Mangangey's testimony that he conducted an inspection accompanied by Dilog and Odsey could not be used against petitioners since Dilog and Odsey were not presented in court to corroborate Mangangey's statement. According to petitioners, the failure to present Dilog and Odsey again violated their rights to remain silent and be presumed innocent. Besides, they posit that the burden of proof to establish their guilt lies with the prosecution.[12]

As to the third, petitioners submit that the alleged admissions of Forayo and Wanason during the preliminary investigation, embodied in the July 15, 1988 Resolution of the Deputized *Tanodbayan* Prosecutor, are inadmissible and hearsay since the investigating officer was not presented to attest to the alleged admissions. Moreover, petitioner Mangangey asserts that even if the admissions were admissible, using these as evidence against him would still violate his constitutional right to due process, under the *res inter alios acta* rule provided under Sec. 28 of Rule 130, Revised Rules on Evidence, which states that "the rights of a party cannot be prejudiced by an act, declaration, or omission of another."[13]

As to the fourth, petitioners assail the admission by the late Bernardo that he did not personally inspect the project as a circumstance that led to their conviction.

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[11] *Rollo*, p. 17.

[12] *Id*.

[13] *Id*. at 179.

As to the fifth, petitioners submit that the interpretation of the *pakyaw* contract on the volume of the work accomplished is not a finding of fact but only the Sandiganbayan's conclusion and consequently cannot be considered circumstantial evidence. Moreover, they aver that only facts from which the inferences are derived, and not conclusions, must be proven.[14]

Finally, petitioners assert that the Sandiganbayan should not have considered the flight of Wandag as circumstantial evidence against them for not only have they been steadfast in their claims that they were innocent, but they were also willing to submit to judicial inquiry, unlike Wandag who took flight.[15]

Petitioners insist that from the evidence submitted, it has not been established that petitioners conspired to falsify documents to defraud the government. They posit that aside from the lone circumstance that the Government paid for an incomplete project, no other evidence or circumstance was adduced to prove that they indeed conspired with Wandag. No proof was shown that they had knowledge of Wandag's criminal intent to defraud the Government as it was established that Wandag alone committed the offense. Moreover, they point out that it was Wandag alone who benefited from the crime as petitioners were never shown to have shared the proceeds with Wandag. Consequently, petitioners conclude that absent proof of conspiracy, they could not be held liable for *estafa*. In all, they assert that the evidence of the prosecution did not overcome petitioners' constitutional and legal right to be presumed innocent.

Wandag masterminded the falsification of the documents

The Sandiganbayan found that Wandag masterminded the fraud and that the local government funded road project was neither submitted to public bidding nor were the required documents on the road project in order when it was launched. Ostensibly, Leon was merely pressured to sign the contract.

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[14] *Id*.

[15] *Id*.

The Sandiganbayan convicted petitioners of the complex crime of *estafa* through falsification of a public document penalized under Articles 315 and 171 in relation to Art. 48 of the Revised Penal Code (RPC). We quote these provisions below:

ART. 315. *Swindling (estafa).*—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by x x x.

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.*—The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;

4. **Making untruthful statements in a narration of facts;**

ART. 48. *Penalty for complex crimes.*––When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

To convict for falsification of a public document under Art. 171, paragraph 4 of the RPC, the following requisites must concur: (1) the offender makes in a document untruthful statements

in a narration of facts; (2) the offender has a legal obligation to disclose the truth of the facts narrated; (3) the facts narrated by the offender are absolutely false; and (4) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.[16]

The elements of the crime of *estafa* under Art. 315, par. 2 of the RPC are: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business, or imaginary transactions; (2) such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[17]

Falsification of public document proven

There is no question that petitioners were public officials and employees performing their official duty when they certified in a public document that they inspected and found that the road project was 100% complete per contract specifications.

COA Examining Technical Audit Specialist Angluben testified on October 28, 1994[18] and stated in his affidavit dated August 27, 1987 that the facts in the certificates of inspection and acceptance were false. His testimony was based on the specifications of the *pakyaw* contract as evinced by the Individual Project Program for Roads and Bridges in the Mountain Province,[19] the original Cross-Section of the Program for Banilag-Minoli Road widening

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[16] *Relucio v. Civil Service Commission*, G.R. No. 147182, November 21, 2002, 392 SCRA 435, 441; *Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, 305 SCRA 396, 413; citing Art. 171 of the RPC.

[17] *Fernandez v. People*, G.R. No. 138503, September 28, 2000, 341 SCRA 277, 286.

[18] TSN, October 28, 1994, pp. 1-46.

[19] Evidence Folder, Exhibit "C".

and partial relocation road project,[20] and the earthwork computations. According to Angluben, the earthworks dug were only 364.5 cu. m.,[21] short of the estimated 4,010 cu. m. He also found that no earthworks were done on the estimated 1,800 cu. m. for removal of slides and overbreaks.[22] The payment of the completed road project was going to be based on the actual volume of the earthworks as clearly specified in the *pakyaw* contract, *vis-à-vis* the estimates of the volume of earthworks in the project. The only conclusion that could be drawn is that the Banilag-Minoli Road was far from finished at the time the certifications were signed by petitioners and when the government paid for the road project.

Based on the aforesaid documents and Angluben's testimony, we agree with the Sandiganbayan that Mangangey lied in his declarations. *First*, his erroneous identification of the starting point of the project puts into doubt his claim that he personally inspected the road project. *Second*, we find it suspect that Mangangey, a foreman and a supposed technical expert of the Provincial Engineer's Office, could not specify the width and the extent of the work done on the road. *Third*, Mangangey's report that the actual earthworks excavated were **exactly the same** as the approximated volume of earthworks to be excavated is highly improbable. He also offered no proof to rebut the results of the technical audit of Angluben.

As to the credibility of Angluben, it is a familiar and fundamental doctrine that the determination of the credibility of witnesses is the domain of the trial court as it is in the best position to observe the witnesses' demeanor.[23] Angluben's oral testimony is supported by documentary evidence. Under the circumstances of this case, we are not inclined to depart from this principle.

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[20] *Id.*, Exhibit "G".

[21] *Id.*, Exhibit "G-4".

[22] *Rollo*, p. 40.

[23] *Llanto v. Alzona*, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

Besides, Forayo and Wanason clearly admitted in their counter-affidavits that they did not personally inspect the project when they affixed their signatures on the Certificate of Inspection and Acceptance. According to Forayo, he merely relied on the late Bernardo's signature. Wanason said he signed because he was threatened by Wandag.

Now, as to the requirement that the accused had a legal obligation to disclose the truth of the facts narrated, suffice it to say that a Certificate of Inspection and Acceptance is required in the processing of vouchers for the payment of government projects. Patently, the falsification of this document by the petitioners caused the release of the payment for an unfinished road at great cost to the Government.

Elements of *estafa* duly proven

Similarly, we find that the charge of *estafa* through falsification of public documents under Art. 315, par. 2(a) of the RPC was likewise proven. The first element, that the accused made false pretenses or fraudulent representations, need not be discussed all over. We have sufficiently gone over this matter. The same holds true with the requirement that these falsifications were made during the commission of the crime. The falsified certificates of inspection and acceptance resulted in the government paying for the unfinished project to the disadvantage and injury of the State. Altogether, the elements of the complex crime of *estafa* through falsification of public document are present.

The question of conspiracy

Did petitioners conspire with Wandag to defraud the Government by making untruthful statements in the certificates of inspection and acceptance?

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[24] Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through

[24] *Talay v. Court of Appeals*, G.R. No. 119477, February 27, 2003, 398 SCRA 185, 201.

circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.[25] Conspiracy must be proven as convincingly as the criminal act itself — like any element of the offense charged, conspiracy must be established by proof beyond reasonable doubt.[26] For a co-conspirator to be liable for the acts of the others, there must be intentional participation in the conspiracy with a view to further a common design.[27] Except for the mastermind, it is necessary that a co-conspirator should have performed some overt act — actual commission of the crime itself, active participation as a direct or indirect contribution in the execution of the crime, or moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[28]

In this case, the ascertained facts abovementioned and the encashment of the contract payment check obtained through the falsified certificate of inspection prove the commission of the crime. Wandag's guilt has been proven with moral certainty. As co-conspirators of Wandag, petitioners are equally guilty, for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all.[29]

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[25] *People v. Cordova*, G.R. No. 83373, July 5, 1993, 224 SCRA 319, 339; *People v. Martinado*, G.R. No. 92020, October 19, 1992, 214 SCRA 712, 732.

[26] *People v. Gregorio*, G.R. No. 153781, September 24, 2003, 412 SCRA 90, 96; *see also People v. Garcia*, G.R. No. 94187, November 4, 1992, 215 SCRA 349, 361; *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9, 13.

[27] *People v. Macatana*, No. 57061, May 9, 1988, 161 SCRA 235, 240.

[28] *People v. De Roxas*, G.R. No. 106783, February 15, 1995, 241 SCRA 369, 378.

[29] *People v. Liquiran*, G.R. No. 105693, November 19, 1993, 228 SCRA 62, 74; *People v. Rostata*, G.R. No. 91482, February 9, 1993, 218 SCRA 657, 678; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385, 401.

Now, had the conspiracy of petitioners been proven beyond reasonable doubt?

Recall that petitioners were convicted allegedly on circumstantial evidence. Under Sec. 4, Rule 133 of the Rules of Court on Revised Rules of Evidence, circumstantial evidence would be sufficient to convict the offender if (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. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain that leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, that is, the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[30]

Based on our earlier discussion, the facts and the circumstances earlier mentioned when strung together duly prove guilt beyond reasonable doubt. Mangangey did not inspect the road project. He could not say where the starting point of the subject project was when he was supposed to have inspected it. He certified that the subject project was completed **exactly** to the approximate volume of excavated earth without making any measurements of the earthworks accomplished. Forayo and Wanason willfully signed the Certificate of Inspection and Acceptance, and certified that they personally inspected the road when in fact they did not as admitted in their counter-affidavits during the preliminary investigation. Wandag took flight — a sign of guilt.

In addition, it has not been shown that Forayo and Wanason were under duress when they signed the falsified documents nor that any of their constitutional rights have been violated when they made their declarations in their counter-affidavits. Both Forayo and Wanason did not dispute the finding that

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[30] *People v. Genobia,* G.R. No. 110068, August 3, 1994, 234 SCRA 699, 706; *People v. Alvero,* G.R. No. 72319, June 30, 1993, 224 SCRA 16, 27.

Mangangey did not inspect the road project. They instead only gave separate excuses on why they signed the certificate. Also, the non-presentation of the investigating officer who conducted the preliminary investigation to testify on the admissions is insignificant as this would only be corroborative. Although petitioners vehemently deny receiving money from Wandag as their share in the loot, this information is of no moment. The concerted acts of the co-conspirators resulted in the processing and release of the payment for an unfinished road to the disadvantage and damage to the government. All these circumstances are based on facts proven by the prosecution, pointing to Wandag and petitioners as conspiring to defraud the Government. Finally, we do not agree with petitioners that as lowly employees, they were only prevailed upon by Wandag. As succinctly observed by the Sandiganbayan, if indeed there was duress, this duress is not the exempting circumstance of "irresistible force" in Art. 12, par. 5 of the RPC sufficient to exculpate petitioners. A moral choice was available to them.

Further, we have reviewed the records and we agree with the Sandiganbayan that the testimony of Angluben was credible, consistent and categorical in contrast with the testimony of Mangangey, and there is no need to corroborate Angluben's testimony. Corroborative evidence is necessary only when there are reasons to suspect that the witness falsified the truth or that his observations were inaccurate.[31]

Petitioners are likewise mistaken that the interpretation of the provision in the *pakyaw* contract on the volume of the work accomplished is not factual but merely a conclusion by the Sandiganbayan. Angluben testified that that there was only 364.5 cu. m. of excavation work compared to the projected 5,810 cu. m. per program of work. The aggregate estimate of 5,810 cu. m. is based on the cross-section of the project and the Individual Project Program. The Sandiganbayan observed that the contract specifies the approximate volume of excavation as a basis for

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[31] *Rivera v. People*, G.R. No. 139185, September 29, 2003, 462 SCRA 350, 364.

payment, and consequently, full payment was due only when the actual work done had been measured and verified corresponding to the maximum approximate volume of work. That there was only 364.5 cu. m. of excavation and there was actual payment for 5,810 cu. m. are not mere interpretations of the contract as petitioners want us to believe. These are physical evidence of the amount of work done and evidence of the incompleteness of the work on the road. All told, we rule that the guilt of petitioners has been proven beyond any iota of doubt.

WHEREFORE, we *DENY* the petition, and *AFFIRM **IN TOTO*** the assailed October 27, 2000 Decision and April 6, 2001 Resolution of the Sandiganbayan Fifth Division in Criminal Case Nos. 17007-08. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Tinga, JJ.,* concur.

THIRD DIVISION

[G.R. No. 153567. February 18, 2008]

LIBRADA M. AQUINO, *petitioner, vs.* **ERNEST S. AURE,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; KATARUNGANG PAMBARANGAY LAW (P.D. NO. 1508); CONCILIATION; A PRECONDITION TO FILING A COMPLAINT IN COURT SUBJECT TO

[1] Substituted by his heirs: Agnes J. Aure, Ma. Cecilia Aure-Quinsay, Ma. Concepcion Criselda Aure-Barrion, Ma. Erna J. Aure, Ernest Michael J. Aure and Ma. Melissa J. Aure; *rollo,* p. 159.

CERTAIN EXCEPTIONS WHICH ARE INAPPLICABLE TO THE PRESENT CASE. — The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the *barangay* courts which, according to the conceptor of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character, and to make it truly effective, it should also be compulsory. With this primary objective of the *barangay* justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508, otherwise known as the Katarungang Pambarangay Law, and the policy behind it would be better served if an out-of-court settlement of the case is reached voluntarily by the parties. The primordial objective of Presidential Decree No. 1508 is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought by the indiscriminate filing of cases in the courts. To ensure this objective, Section 6 of Presidential Decree No. 1508 requires the parties to undergo a conciliation process before the *Lupon Chairman or the Pangkat ng Tagapagkasundo* as a precondition to filing a complaint in court subject to certain exceptions which are inapplicable to this case. The said section has been declared compulsory in nature. Presidential Decree No. 1508 is now incorporated in Republic Act No. 7160, otherwise known as The Local Government Code, which took effect on 1 January 1992.

2. ID.; ID.; ID.; THE CONCILIATION PROCESS IS NOT A JURISDICTIONAL REQUIREMENT, SO THAT NON-COMPLIANCE THEREWITH CANNOT AFFECT THE JURISDICTION WHICH THE COURT HAS OTHERWISE ACQUIRED OVER THE SUBJECT MATTER OR OVER THE PERSON OF THE DEFENDANT. — There is no dispute herein that the present case was never referred to the Barangay Lupon for conciliation before Aure and Aure Lending instituted Civil Case No. 17450. In fact, no allegation of such *barangay* conciliation proceedings was made in Aure and Aure Lending's Complaint before the MeTC. The only issue to be resolved is whether non-recourse to the *barangay* conciliation process is a jurisdictional flaw that warrants the dismissal of the ejectment suit filed with the MeTC. Aquino posits that failure to resort to *barangay* conciliation makes the action for ejectment

premature and, hence, dismissible. She likewise avers that this objection was timely raised during the pre-trial and even subsequently in her Position Paper submitted to the MeTC. We do not agree. It is true that the precise technical effect of failure to comply with the requirement of Section 412 of the Local Government Code on *barangay* conciliation (previously contained in Section 5 of Presidential Decree No. 1508) is much the same effect produced by non-exhaustion of administrative remedies — the complaint becomes afflicted with the vice of pre-maturity; and the controversy there alleged is not ripe for judicial determination. The complaint becomes vulnerable to a motion to dismiss. **Nevertheless, the conciliation process is not a jurisdictional requirement, so that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant.** As enunciated in the landmark case of *Royales v. Intermediate Appellate Court*: Ordinarily, non-compliance with the condition precedent prescribed by P.D. 1508 could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on ground of lack of cause of action or prematurity; **but the same would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants, as in this case, failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings *a quo*.** While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. **Upon this premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.**
x x x

3. ID.; ID.; ID.; PETITIONER CANNOT BE ALLOWED TO ATTACK THE JURISDICTION OF THE TRIAL COURT AFTER HAVING SUBMITTED HERSELF VOLUNTARILY AND HER FAILURE TO SEASONABLY OBJECT TO THE DEFICIENCY IN THE COMPLAINT IS DEEMED AN

ACQUIESCENCE OR WAIVER OF THE DEFECT ATTENDANT THERETO.— We similarly find that Aquino cannot be allowed to attack the jurisdiction of the MeTC over Civil Case No. 17450 after having submitted herself voluntarily thereto. We have scrupulously examined Aquino's Answer before the MeTC in Civil Case No. 17450 and there is utter lack of any objection on her part to any deficiency in the complaint which could oust the MeTC of its jurisdiction. We thus quote with approval the disquisition of the Court of Appeals: Moreover, the Court takes note that the defendant [Aquino] herself did not raise in defense the aforesaid lack of conciliation proceedings in her answer, which raises the exclusive affirmative defense of simulation. By this acquiescence, defendant [Aquino] is deemed to have waived such objection. As held in a case of similar circumstances, the failure of a defendant [Aquino] in an ejectment suit to specifically allege the fact that there was no compliance with the barangay conciliation procedure constitutes a waiver of that defense. x x x. By Aquino's failure to seasonably object to the deficiency in the Complaint, she is deemed to have already acquiesced or waived any defect attendant thereto. Consequently, Aquino cannot thereafter move for the dismissal of the ejectment suit for Aure and Aure Lending's failure to resort to the *barangay* conciliation process, since she is already precluded from doing so. The fact that Aquino raised such objection during the pre-trial and in her Position Paper is of no moment, for the issue of non-recourse to *barangay* mediation proceedings should be impleaded in her **Answer**.

4. ID.; ID.; OMNIBUS MOTION; ALTHOUGH PETITIONER'S DEFENSE OF NON-COMPLIANCE IS MERITORIOUS, PROCEDURALLY, SUCH DEFENSE IS NO LONGER AVAILABLE FOR HER FAILURE TO PLEAD THE SAME IN THE ANSWER AS REQUIRED BY THE OMNIBUS MOTION RULE.— While Section 1, Rule 9 of the 1997 Rules of Civil Procedure applies to a pleading (specifically, an Answer) or a motion to dismiss, a similar or identical rule is provided for all other motions in Section 8 of Rule 15 of the same Rule which states: Sec. 8. *Omnibus Motion*. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. The spirit that surrounds the foregoing

statutory norm is to require the party filing a pleading or motion to raise all available exceptions for relief during the single opportunity so that single or multiple objections may be avoided. It is clear and categorical in Section 1, Rule 9 of the Revised Rules of Court that failure to raise defenses and objections in a motion to dismiss or in an answer is deemed a waiver thereof; and basic is the rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application. Thus, although Aquino's defense of non-compliance with Presidential Decree No. 1508 is meritorious, procedurally, such defense is no longer available for failure to plead the same in the Answer as required by the *omnibus* motion rule.

5. ID.; ID.; ID.; A COURT MAY NOT *MOTU PROPIO* DISMISS A CASE ON THE GROUND OF FAILURE TO COMPLY WITH THE REQUIREMENT OF *BARANGAY* CONCILIATION, THE GROUND NOT BEING AMONG THOSE MENTIONED IN THE RULES FOR THE DISMISSAL BY THE TRIAL COURT OF A CASE ON ITS OWN INITIATIVE. — Neither could the MeTC dismiss Civil Case No. 17450 *motu proprio*. The 1997 Rules of Civil Procedure provide only three instances when the court may *motu proprio* dismiss the claim, and that is when the pleadings or evidence on the record show that (1) the court has no jurisdiction over the subject matter; (2) there is another cause of action pending between the same parties for the same cause; or (3) where the action is barred by a prior judgment or by a statute of limitations. Thus, it is clear that a court may not *motu proprio* dismiss a case on the ground of failure to comply with the requirement for *barangay* conciliation, this ground not being among those mentioned for the dismissal by the trial court of a case on its own initiative.

6. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; JURISDICTION IN EJECTMENT CASES IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT; AS LONG AS THE ALLEGATIONS DEMONSTRATE A CAUSE OF ACTION EITHER FOR FORCIBLE ENTRY OR FOR UNLAWFUL DETAINER,

THE COURT ACQUIRES JURISDICTION OVER THE SUBJECT MATTER. — Aquino further argues that the issue of possession in the instant case cannot be resolved by the MeTC without first adjudicating the question of ownership, since the Deed of Sale vesting Aure with the legal right over the subject property is simulated. Again, we do not agree. Jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint. As long as these allegations demonstrate a cause of action either for forcible entry or for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court — after acquiring jurisdiction — may resolve to dismiss the action for insufficiency of evidence.

7. ID.; ID.; ID.; COURTS CAN RESOLVE THE QUESTION OF OWNERSHIP RAISED AS AN INCIDENT IN AN EJECTMENT CASE WHERE A DETERMINATION THEREOF IS NECESSARY FOR A PROPER AND COMPLETE ADJUDICATION OF THE ISSUE OF POSSESSION. — It can be inferred from the complaint that Aure, together with Aure Lending, sought the possession of the subject property which was never surrendered by Aquino after the perfection of the Deed of Sale, which gives rise to a cause of action for an ejectment suit cognizable by the MeTC. Aure's assertion of possession over the subject property is based on his ownership thereof as evidenced by TCT No. 156802 bearing his name. That Aquino impugned the validity of Aure's title over the subject property and claimed that the Deed of Sale was simulated should not divest the MeTC of jurisdiction over the ejectment case. As extensively discussed by the eminent jurist Florenz D. Regalado in *Refugia v. Court of Appeals*: x x x. **The law, as revised, now provides instead that when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.** On its face, the new Rule on Summary Procedure was extended to include within the jurisdiction of the inferior courts ejectment cases which likewise involve the issue of ownership. This does not mean, however, that blanket authority to adjudicate the issue of ownership in ejectment suits has been thus conferred on the inferior courts. In other words, inferior courts are now "conditionally vested with adjudicatory power over the issue

of title or ownership raised by the parties in an ejectment suit." These courts shall resolve the question of ownership raised as an incident in an ejectment case where a determination thereof is necessary for a proper and complete adjudication of the issue of possession.

APPEARANCES OF COUNSEL

Benigno M. Puno for petitioner.
M.C. Santos Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Revised Rules of Court filed by petitioner Librada M. Aquino (Aquino), seeking the reversal and the setting aside of the Decision[3] dated 17 October 2001 and the Resolution[4] dated 8 May 2002 of the Court of Appeals in CA-G.R. SP No. 63733. The appellate court, in its assailed Decision and Resolution, reversed the Decision[5] of the Regional Trial Court (RTC) of Quezon City, Branch 88, affirming the Decision[6] of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 32, which dismissed respondent Ernesto Aure's (Aure) complaint for ejectment on the ground, *inter alia*, of failure to comply with *barangay* conciliation proceedings.

The subject of the present controversy is a parcel of land situated in Roxas District, Quezon City, with an area of 449 square meters and covered by Transfer Certificate of Title (TCT)

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[2] *Rollo,* pp. 8-21.

[3] Penned by Associate Justice Ramon Mabutas, Jr. with Associate Justices Roberto A. Barrios and Edgardo P. Cruz, concurring. *Rollo,* pp. 21-26.

[4] *Id.* at 28.

[5] Records, 514-515.

[6] *Id.* at 436-439.

No. 205447 registered with the Registry of Deeds of Quezon City (subject property).[7]

Aure and E.S. Aure Lending Investors, Inc. (Aure Lending) filed a Complaint for ejectment against Aquino before the MeTC docketed as Civil Case No. 17450. In their Complaint, Aure and Aure Lending alleged that they acquired the subject property from Aquino and her husband Manuel (spouses Aquino) by virtue of a Deed of Sale[8] executed on 4 June 1996. Aure claimed that after the spouses Aquino received substantial consideration for the sale of the subject property, they refused to vacate the same.[9]

In her Answer,[10] Aquino countered that the Complaint in Civil Case No. 17450 lacks cause of action for Aure and Aure Lending do not have any legal right over the subject property. Aquino admitted that there was a sale but such was governed by the Memorandum of Agreement[11] (MOA) signed by Aure. As stated in the MOA, Aure shall secure a loan from a bank or financial institution in his own name using the subject property as collateral and turn over the proceeds thereof to the spouses Aquino. However, even after Aure successfully secured a loan, the spouses Aquino did not receive the proceeds thereon or benefited therefrom.

On 20 April 1999, the MeTC rendered a Decision in Civil Case No. 17450 in favor of Aquino and dismissed the Complaint for ejectment of Aure and Aure Lending for non-compliance with the *barangay* conciliation process, among other grounds. The MeTC observed that Aure and Aquino are residents of the same *barangay* but there is no showing that any attempt has been made to settle the case amicably at the *barangay* level. The MeTC further observed that Aure Lending was improperly

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[7] *Id*. at 482-483.

[8] *Id*.

[9] *Id*. at 1-7.

[10] *Id*. at 11-15.

[11] *Id*. at 14-15.

included as plaintiff in Civil Case No. 17450 for it did not stand to be injured or benefited by the suit. Finally, the MeTC ruled that since the question of ownership was put in issue, the action was converted from a mere detainer suit to one "incapable of pecuniary estimation" which properly rests within the original exclusive jurisdiction of the RTC. The dispositive portion of the MeTC Decision reads:

> WHEREFORE, premises considered, let this case be, as it is, hereby ordered DISMISSED. [Aquino's] counterclaim is likewise dismissed.[12]

On appeal, the RTC affirmed the dismissal of the Complaint on the same ground that the dispute was not brought before the Barangay Council for conciliation before it was filed in court. In a Decision dated 14 December 2000, the RTC stressed that the *barangay* conciliation process is a *conditio sine qua non* for the filing of an ejectment complaint involving residents of the same *barangay*, and failure to comply therewith constitutes sufficient cause for the dismissal of the action. The RTC likewise validated the ruling of the MeTC that the main issue involved in Civil Case No. 17450 is incapable of pecuniary estimation and cognizable by the RTC. Hence, the RTC ruled:

> WHEREFORE, finding no reversible error in the appealed judgment, it is hereby affirmed in its entirety.[13]

Aure's Motion for Reconsideration was denied by the RTC in an Order[14] dated 27 February 2001.

Undaunted, Aure appealed the adverse RTC Decision with the Court of Appeals arguing that the lower court erred in dismissing his Complaint for lack of cause of action. Aure asserted that misjoinder of parties was not a proper ground for dismissal of his Complaint and that the MeTC should have only ordered the exclusion of Aure Lending as plaintiff without prejudice to the

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[12] *Id*. at 439.

[13] *Id*. at 516.

[14] *Id*. at 537.

continuation of the proceedings in Civil Case No. 17450 until the final determination thereof. Aure further asseverated that mere allegation of ownership should not divest the MeTC of jurisdiction over the ejectment suit since jurisdiction over the subject matter is conferred by law and should not depend on the defenses and objections raised by the parties. Finally, Aure contended that the MeTC erred in dismissing his Complaint with prejudice on the ground of non-compliance with *barangay* conciliation process. He was not given the opportunity to rectify the procedural defect by going through the *barangay* mediation proceedings and, thereafter, refile the Complaint.[15]

On 17 October 2001, the Court of Appeals rendered a Decision, reversing the MeTC and RTC Decisions and remanding the case to the MeTC for further proceedings and final determination of the substantive rights of the parties. The appellate court declared that the failure of Aure to subject the matter to *barangay* conciliation is not a jurisdictional flaw and it will not affect the sufficiency of Aure's Complaint since Aquino failed to seasonably raise such issue in her Answer. The Court of Appeals further ruled that mere allegation of ownership does not deprive the MeTC of jurisdiction over the ejectment case for jurisdiction over the subject matter is conferred by law and is determined by the allegations advanced by the plaintiff in his complaint. Hence, mere assertion of ownership by the defendant in an ejectment case will not oust the MeTC of its summary jurisdiction over the same. The decretal part of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the petition is hereby GRANTED — and the decisions of the trial courts below REVERSED and SET ASIDE. Let the records be remanded back to the court *a quo* for further proceedings — for an eventual decision of the substantive rights of the disputants.[16]

In a Resolution dated 8 May 2002, the Court of Appeals denied the Motion for Reconsideration interposed by Aquino

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[15] *Id.* at 465-480.

[16] *Rollo*, p. 25.

for it was merely a rehash of the arguments set forth in her previous pleadings which were already considered and passed upon by the appellate court in its assailed Decision.

Aquino is now before this Court *via* the Petition at bar raising the following issues:

I.

WHETHER OR NOT NON-COMPLIANCE WITH THE *BARANGAY* CONCILIATION PROCEEDINGS IS A JURISDICTIONAL DEFECT THAT WARRANTS THE DISMISSAL OF THE COMPLAINT.

II.

WHETHER OR NOT ALLEGATION OF OWNERSHIP OUSTS THE MeTC OF ITS JURISDICTION OVER AN EJECTMENT CASE.

The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the *barangay* courts which, according to the conceptor of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character, and to make it truly effective, it should also be compulsory. With this primary objective of the *barangay* justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508, otherwise known as the Katarungang Pambarangay Law, and the policy behind it would be better served if an out-of-court settlement of the case is reached voluntarily by the parties.[17]

The primordial objective of Presidential Decree No. 1508 is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought by the indiscriminate filing of cases in the courts.[18] To ensure this objective, Section 6 of Presidential Decree No. 1508[19] requires

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[17] *People v. Caruncho, Jr.*, 212 Phil. 16, 27 (1984).

[18] *Galuba v. Laureta*, G.R. No. 71091, 29 January 1988, 157 SCRA 627, 634.

[19] SECTION 6. Conciliation, pre-condition to filing of complaint. — No complaint, petition, action or proceeding involving any matter within the authority

the parties to undergo a conciliation process before the *Lupon Chairman or the Pangkat ng Tagapagkasundo* as a precondition to filing a complaint in court subject to certain exceptions[20] which are inapplicable to this case. The said section has been declared compulsory in nature.[21]

Presidential Decree No. 1508 is now incorporated in Republic Act No. 7160, otherwise known as The Local Government Code, which took effect on 1 January 1992.

The pertinent provisions of the Local Government Code making conciliation a precondition to filing of complaints in court, read:

SEC. 412. *Conciliation*. — (a) *Pre-condition to filing of complaint in court*. — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties

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of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. However, the parties may go directly to court in the following cases:

[1] Where the accused is under detention;

[2] Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

[3] Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support *pendente lite*; and

[4] Where the action may otherwise be barred by the Statute of Limitations.

[20] Paragraph 2, Section 6, PD No. 1508.

However, the parties may go directly to court in the following cases:

[1] Where the accused is under detention;

[2] Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

[3] Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support *pendente lite*; and

[4] Where the action may otherwise be barred by the Statute of Limitations.

[21] *Morata v. Go*, 210 Phil. 367, 372 (1983).

before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* chairman or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court*. — The parties may go directly to court in the following instances:

(1) Where the accused is under detention;

(2) Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

(3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; and

(4) Where the action may otherwise be barred by the statute of limitations.

(c) Conciliation among members of indigenous cultural communities. — The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

SEC. 408. *Subject Matter for Amicable Settlement; Exception Therein*. – The lupon of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

(a) Where one party is the government or any subdivision or instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (₱5,000.00);

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;

(f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay*

units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

There is no dispute herein that the present case was never referred to the Barangay Lupon for conciliation before Aure and Aure Lending instituted Civil Case No. 17450. In fact, no allegation of such *barangay* conciliation proceedings was made in Aure and Aure Lending's Complaint before the MeTC. The only issue to be resolved is whether non-recourse to the *barangay* conciliation process is a jurisdictional flaw that warrants the dismissal of the ejectment suit filed with the MeTC.

Aquino posits that failure to resort to *barangay* conciliation makes the action for ejectment premature and, hence, dismissible. She likewise avers that this objection was timely raised during the pre-trial and even subsequently in her Position Paper submitted to the MeTC.

We do not agree.

It is true that the precise technical effect of failure to comply with the requirement of Section 412 of the Local Government Code on *barangay* conciliation (previously contained in Section 5 of Presidential Decree No. 1508) is much the same effect produced by non-exhaustion of administrative remedies — the complaint becomes afflicted with the vice of pre-maturity; and the controversy there alleged is not ripe for judicial determination. The complaint becomes vulnerable to a motion to dismiss.[22] **Nevertheless, the conciliation process is not a jurisdictional requirement, so that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant**.[23]

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[22] *Uy v. Contreras*, G.R. Nos. 111416-17, 26 September 1994, 237 SCRA 167, 170.

[23] *Presco v. Court of Appeals*, G.R. No. 82215, 10 December 1990, 192 SCRA 232, 240-241.

As enunciated in the landmark case of *Royales v. Intermediate Appellate Court*:[24]

> Ordinarily, non-compliance with the condition precedent prescribed by P.D. 1508 could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on ground of lack of cause of action or prematurity; **but the same would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants, as in this case, failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings *a quo*.**
>
> While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. **Upon this premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.** x x x (Emphasis supplied.)

In the case at bar, we similarly find that Aquino cannot be allowed to attack the jurisdiction of the MeTC over Civil Case No. 17450 after having submitted herself voluntarily thereto. We have scrupulously examined Aquino's Answer before the MeTC in Civil Case No. 17450 and there is utter lack of any objection on her part to any deficiency in the complaint which could oust the MeTC of its jurisdiction.

We thus quote with approval the disquisition of the Court of Appeals:

> Moreover, the Court takes note that the defendant [Aquino] herself did not raise in defense the aforesaid lack of conciliation proceedings in her answer, which raises the exclusive affirmative defense of simulation. By this acquiescence, defendant [Aquino] is deemed to have waived such objection. As held in a case of similar circumstances, the failure of a defendant [Aquino] in an ejectment suit to specifically

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[24] 212 Phil. 432, 435-436 (1984).

allege the fact that there was no compliance with the *barangay* conciliation procedure constitutes a waiver of that defense. x x x.[25]

By Aquino's failure to seasonably object to the deficiency in the Complaint, she is deemed to have already acquiesced or waived any defect attendant thereto. Consequently, Aquino cannot thereafter move for the dismissal of the ejectment suit for Aure and Aure Lending's failure to resort to the *barangay* conciliation process, since she is already precluded from doing so. The fact that Aquino raised such objection during the pre-trial and in her Position Paper is of no moment, for the issue of non-recourse to *barangay* mediation proceedings should be impleaded in her **Answer.**

As provided under Section 1, Rule 9 of the 1997 Rules of Civil Procedure:

> Sec. 1. *Defenses and objections not pleaded.* — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (Emphasis supplied.)

While the aforequoted provision applies to a pleading (specifically, an Answer) or a motion to dismiss, a similar or identical rule is provided for all other motions in Section 8 of Rule 15 of the same Rule which states:

> Sec. 8. *Omnibus Motion.* — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

The spirit that surrounds the foregoing statutory norm is to require the party filing a pleading or motion to raise all available exceptions for relief during the single opportunity so that single

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[25] *Rollo,* p. 24.

or multiple objections may be avoided.[26] It is clear and categorical in Section 1, Rule 9 of the Revised Rules of Court that failure to raise defenses and objections in a motion to dismiss or in an answer is deemed a waiver thereof; and basic is the rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.[27] As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[28] Thus, although Aquino's defense of non-compliance with Presidential Decree No. 1508 is meritorious, procedurally, such defense is no longer available for failure to plead the same in the Answer as required by the *omnibus* motion rule.

Neither could the MeTC dismiss Civil Case No. 17450 *motu proprio*. The 1997 Rules of Civil Procedure provide only three instances when the court may *motu proprio* dismiss the claim, and that is when the pleadings or evidence on the record show that (1) the court has no jurisdiction over the subject matter; (2) there is another cause of action pending between the same parties for the same cause; or (3) where the action is barred by a prior judgment or by a statute of limitations. Thus, it is clear that a court may not *motu proprio* dismiss a case on the ground of failure to comply with the requirement for *barangay* conciliation, this ground not being among those mentioned for the dismissal by the trial court of a case on its own initiative.

Aquino further argues that the issue of possession in the instant case cannot be resolved by the MeTC without first adjudicating the question of ownership, since the Deed of Sale vesting Aure with the legal right over the subject property is simulated.

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[26] *Manacop v. Court of Appeals*, G.R. No. 104875, 13 November 1992, 215 SCRA 773, 778.

[27] *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, 8 June 2006, 490 SCRA 368, 376.

[28] *Id*.

Again, we do not agree. Jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint. As long as these allegations demonstrate a cause of action either for forcible entry or for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court — after acquiring jurisdiction — may resolve to dismiss the action for insufficiency of evidence.

The necessary allegations in a Complaint for ejectment are set forth in Section 1, Rule 70 of the Rules of Court, which reads:

SECTION 1. *Who may institute proceedings, and when*. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

In the case at bar, the Complaint filed by Aure and Aure Lending on 2 April 1997, alleged as follows:

2. [Aure and Aure Lending] became the owners of a house and lot located at No. 37 Salazar Street corner Encarnacion Street, B.F. Homes, Quezon City by virtue of a deed of absolute sale executed by [the spouses Aquino] in favor of [Aure and Aure Lending] although registered in the name of x x x Ernesto S. Aure; title to the said property had already been issued in the name of [Aure] as shown by a transfer Certificate of Title, a copy of which is hereto attached and made an integral part hereof as Annex A;

3. However, despite the sale thus transferring ownership of the subject premises to [Aure and Aure Lending] as above-stated and consequently terminating [Aquino's] right of possession over the subject property, [Aquino] together with her family, is continuously

occupying the subject premises notwithstanding several demands made by [Aure and Aure Lending] against [Aquino] and all persons claiming right under her to vacate the subject premises and surrender possession thereof to [Aure and Aure Lending] causing damage and prejudice to [Aure and Aure Lending] and making [Aquino's] occupancy together with those actually occupying the subject premises claiming right under her, illegal.[29]

It can be inferred from the foregoing that Aure, together with Aure Lending, sought the possession of the subject property which was never surrendered by Aquino after the perfection of the Deed of Sale, which gives rise to a cause of action for an ejectment suit cognizable by the MeTC. Aure's assertion of possession over the subject property is based on his ownership thereof as evidenced by TCT No. 156802 bearing his name. That Aquino impugned the validity of Aure's title over the subject property and claimed that the Deed of Sale was simulated should not divest the MeTC of jurisdiction over the ejectment case.[30]

As extensively discussed by the eminent jurist Florenz D. Regalado in *Refugia v. Court of Appeals*:[31]

As the law on forcible entry and unlawful detainer cases now stands, even where the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts nevertheless have the undoubted competence to resolve the issue of ownership albeit only to determine the issue of possession.

x x x. **The law, as revised, now provides instead that when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.** On its face, the new Rule on Summary Procedure was extended to include within the jurisdiction of the inferior courts ejectment cases which likewise involve the issue of ownership. This does not mean, however, that

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[29] Records, pp. 1-2.

[30] *Tecson v. Gutierez*, G.R. No. 152928, 4 March 2005, 452 SCRA 781, 786.

[31] 327 Phil. 982, 1001-1002 (1996).

blanket authority to adjudicate the issue of ownership in ejectment suits has been thus conferred on the inferior courts.

At the outset, it must here be stressed that the resolution of this particular issue concerns and applies only to forcible entry and unlawful detainer cases where the issue of possession is intimately intertwined with the issue of ownership. It finds no proper application where it is otherwise, that is, where ownership is not in issue, or where the principal and main issue raised in the allegations of the complaint as well as the relief prayed for make out not a case for ejectment but one for recovery of ownership.

Apropos thereto, this Court ruled in *Hilario v. Court of Appeals*:[32]

Thus, an adjudication made therein regarding the issue of ownership should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land. The foregoing doctrine is a necessary consequence of the nature of forcible entry and unlawful detainer cases where the only issue to be settled is the physical or material possession over the real property, that is, possession *de facto* and not possession *de jure*."

In other words, inferior courts are now "conditionally vested with adjudicatory power over the issue of title or ownership raised by the parties in an ejectment suit." These courts shall resolve the question of ownership raised as an incident in an ejectment case where a determination thereof is necessary for a proper and complete adjudication of the issue of possession.[33]

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals Decision dated 17 October 2001 and its Resolution dated 8 May 2002 in CA-G.R. SP No. 63733 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

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[32] 329 Phil. 202, 208 (1996), as cited in *Oronce v. Court of Appeals*, 358 Phil. 616 (1998).

[33] *Id*.

THIRD DIVISION

[G.R. No. 155831. February 18, 2008]

MA. LOURDES T. DOMINGO, *petitioner, vs.* **ROGELIO I. RAYALA,** *respondent.*

[G.R. No. 155840. February 18, 2008]

ROGELIO I. RAYALA, *petitioner, vs.* **OFFICE OF THE PRESIDENT; RONALDO V. ZAMORA, in his capacity as Executive Secretary; ROY V. SENERES, in his capacity as Chairman of the National Labor Relations Commission (in lieu of RAUL T. AQUINO, in his capacity as Acting Chairman of the National Labor Relations Commission); and MA. LOURDES T. DOMINGO,** *respondents.*

[G.R. No. 158700. February 18, 2008]

The REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE PRESIDENT; and ALBERTO G. ROMULO, in his capacity as Executive Secretary, *petitioners, vs.* **ROGELIO I. RAYALA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; ELEMENTS. — Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari.* It consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity

of the two preceding particulars such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.

2. ID.; ID.; ID.; ID.; IT CANNOT BE SAID THAT THE OFFICE OF THE SOLICITOR GENERAL FILED MULTIPLE SUITS INVOLVING THE SAME PARTIES FOR THE SAME CAUSE OF ACTION INVOLVING THE SAME PARTIES FOR THE SAME CAUSE OF ACTION, EITHER SIMULTANEOUSLY OR SUCCESSIVELY, FOR THE PURPOSE OF OBTAINING A FAVORABLE JUDGMENT. — Reviewing the antecedents of these consolidated cases, we note that the CA rendered the assailed Resolution on October 18, 2002. The Republic filed its Motion for Reconsideration on November 22, 2002. On the other hand, Rayala filed his petition before this Court on November 21, 2002. While the Republic's Motion for Reconsideration was pending resolution before the CA, on December 2, 2002, it was directed by this Court to file its Comment on Rayala's petition, which it submitted on June 16, 2003. When the CA denied the Motion for Reconsideration, the Republic filed its own Petition for Review with this Court on July 3, 2003. It cited in its "Certification and Verification of a Non-Forum Shopping" (sic), that there was a case involving the same facts pending before this Court denominated as G.R. No. 155840. With respect to Domingo's petition, the same had already been dismissed on February 19, 2003. Domingo's petition was reinstated on June 16, 2003 but the resolution was received by the OSG only on July 25, 2003, or after it had filed its own petition. Based on the foregoing, it cannot be said that the OSG is guilty of forum shopping. We must point out that it was Rayala who filed the petition in the CA, with the Republic as the adverse party. Rayala himself filed a motion for reconsideration of the CA's December 21, 2001 Decision, which led to a more favorable ruling, *i.e.*, the lowering of the penalty from dismissal to one-year suspension. The parties adversely affected by this ruling (Domingo and the Republic) had the right to question the same on motion for reconsideration. But Domingo directly filed a Petition for Review with this Court, as did Rayala. When the Republic opted to file a motion for reconsideration, it was merely exercising a right. That Rayala and Domingo had by then already filed cases before the SC did not take away this right. Thus, when this Court directed the Republic to file its

Comment on Rayala's petition, it had to comply, even if it had an unresolved motion for reconsideration with the CA, lest it be cited for contempt. Accordingly, it cannot be said that the OSG "file[d] multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."

3. POLITICAL LAW; ADMINISTRATIVE LAW; ANTI-SEXUAL HARASSMENT ACT OF 1995 (REPUBLIC ACT NO. 7877); THE COURT OF APPEALS CORRECTLY RULED THAT PETITIONER'S CULPABILITY IS NOT TO BE DETERMINED SOLELY ON THE BASIS OF SECTION 3, RA 7877, BECAUSE HE IS CHARGED WITH THE ADMINISTRATIVE OFFENSE, NOT THE CRIMINAL OFFENSE OF SEXUAL HARASSMENT; IT IS ENOUGH THAT THE APPELLATE COURT ALONG WITH THE INVESTIGATING COMMITTEE AND THE OFFICE OF THE PRESIDENT, FOUND SUBSTANTIAL EVIDENCE TO SUPPORT THE CHARGE. — Basic in the law of public officers is the *three-fold liability rule,* which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others. This rule applies with full force to sexual harassment. The law penalizing sexual harassment in our jurisdiction is RA 7877. Section 3 thereof defines work-related sexual harassment. The section, in relation to Section 7 on penalties, defines the criminal aspect of the unlawful act of sexual harassment. The same section, in relation to Section 6, authorizes the institution of an independent civil action for damages and other affirmative relief. Section 4, also in relation to Section 3, governs the procedure for administrative cases. The CA, thus, correctly ruled that Rayala's culpability is not to be determined solely on the basis of Section 3, RA 7877, because he is charged with the administrative offense, not the criminal infraction, of sexual harassment. It should be enough that the CA, along with the Investigating Committee and the Office of the President, found substantial evidence to support the administrative charge.

4. ID.; ID.; ID.; THE "DEMAND, REQUEST OR REQUIREMENT OF A SEXUAL FAVOR" NEED NOT BE ARTICULATED IN A CATEGORICAL ORAL OR WRITTEN STATEMENT BUT MAY BE DISCERNED, WITH EQUAL CERTITUDE

FROM THE ACTS OF THE OFFENDER; RESPONDENT'S ACTS RESOUND WITH DEAFENING CLARITY THE UNSPOKEN REQUEST FOR A SEXUAL FAVOR. — Even if we were to test Rayala's acts strictly by the standards set in Section 3, RA 7877, he would still be administratively liable. It is true that this provision calls for a "demand, request or requirement of a sexual favor." But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones — all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.

5. ID.; ID.; ID.; IT IS NOT ESSENTIAL THAT THE DEMAND, REQUEST OR REQUIREMENT BE MADE AS A CONDITION FOR CONTINUED EMPLOYMENT OR FOR PROMOTION TO A HIGHER POSITION; IT IS ENOUGH THAT THE RESPONDENT'S ACTS RESULT IN CREATING AN INTIMIDATING, HOSTILE OR OFFENSIVE ENVIRONMENT FOR THE EMPLOYEE. — Contrary to Rayala's claim, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee. That the acts of Rayala generated an intimidating and hostile environment for Domingo is clearly shown by the common factual finding of the Investigating Committee, the OP and the CA that Domingo reported the matter to an officemate and, after the last incident, filed for a leave of absence and requested transfer to another unit.

6. ID.; ID.; ID.; THE FACTUAL MILIEU IN *ACOSTA VS. AQUINO* DOES NOT OBTAIN IN CASE AT BAR. — The factual milieu in *Aquino* does not obtain in the case at bench. While in *Aquino,* the Court interpreted the acts (of Judge Acosta) as casual gestures of friendship and camaraderie, done during festive or special occasions and with other people present, in the instant

case, Rayala's acts of holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, and the inappropriate comments, were all made in the confines of Rayala's office when no other members of his staff were around. More importantly, and a circumstance absent in *Aquino*, Rayala's acts, as already adverted to above, produced a hostile work environment for Domingo, as shown by her having reported the matter to an officemate and, after the last incident, filing for a leave of absence and requesting transfer to another unit.

7. ID.; ID.; ID.; THE QUESTION OF WHETHER OR NOT AO 250 COVERS RESPONDENT IS OF NO REAL CONSEQUENCE AS THE EVENTS OF THE CASE UNMISTAKABLY SHOW THAT THE ADMINISTRATIVE CHARGES WERE FOR VIOLATION OF RA 7877; IF AO 250 WAS USED AT ALL, IT WAS TO SERVE MERELY AS AN AUXILIARY PROCEDURAL GUIDE TO AID THE COMMITTEE IN THE ORDERLY CONDUCT OF THE INVESTIGATION OF CHARGES AGAINST HIM. — We find that the question of whether or not AO 250 covers Rayala is of no real consequence. The events of this case unmistakably show that the administrative charges against Rayala were for violation of RA 7877; that the OP properly assumed jurisdiction over the administrative case; that the participation of the DOLE, through the Committee created by the Secretary, was limited to initiating the investigation process, reception of evidence of the parties, preparation of the investigation report, and recommending the appropriate action to be taken by the OP. AO 250 had never really been applied to Rayala. If it was used at all, it was to serve merely as an auxiliary procedural guide to aid the Committee in the orderly conduct of the investigation.

8. ID.; ID.; ID.; PRESENT CASE IS AN ADMINISTRATIVE CASE FOR SEXUAL HARASSMENT; WHETHER THE CRIME OF SEXUAL HARASSMENT IS *MALUM IN SE* OR *MALUM PROHIBITUM* IS IMMATERIAL. — Rayala alleges that the CA erred in holding that sexual harassment is an offense *malum prohibitum.* He argues that intent is an essential element in sexual harassment, and since the acts imputed to him were done allegedly without malice, he should be absolved of the charges against him. We reiterate that what is before us is an *administrative* case for sexual harassment. Thus, whether the

crime of sexual harassment is *malum in se* or *malum prohibitum* is immaterial.

9. ID.; ID.; ID.; RESPONDENT'S BARE ASSERTION OF CONSPIRACY CANNOT STAND AGAINST THE EVIDENCE PRESENTED BY PETITIONER.— We also reject Rayala's allegations that the charges were filed because of a conspiracy to get him out of office and thus constitute merely political harassment. A conspiracy must be proved by clear and convincing evidence. His bare assertions cannot stand against the evidence presented by Domingo. As we have already ruled, the acts imputed to Rayala have been proven as fact. Moreover, he has not proven any ill motive on the part of Domingo and her witnesses which would be ample reason for her to conjure stories about him. On the contrary, ill motive is belied by the fact that Domingo and her witnesses — all employees of the NLRC at that time — stood to lose their jobs or suffer unpleasant consequences for coming forward and charging their boss with sexual harassment.

10. ID.; ID.; ID.; RESPONDENT WAS PROPERLY ACCORDED DUE PROCESS. — We hold that Rayala was properly accorded due process. In previous cases, this Court held that: [i]n administrative proceedings, due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected. The records of the case indicate that Rayala was afforded all these procedural due process safeguards. Although in the beginning he questioned the authority of the Committee to try him, he appeared, personally and with counsel, and participated in the proceedings.

11. ID.; ID.; ID.; ANY FINDING OF LIABILITY FOR SEXUAL HARASSMENT MAY ALSO BE THE BASIS OF CULPABILITY FOR DISGRACEFUL AND IMMORAL

CONDUCT. — This Court has held that, even in criminal cases, the designation of the offense is not controlling, thus: What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. It is noteworthy that under AO 250, sexual harassment amounts to disgraceful and immoral conduct. Thus, any finding of liability for sexual harassment may also be the basis of culpability for disgraceful and immoral conduct.

12. ID.; ID.; ID.; THE OFFICE OF THE PRESIDENT ERRED IN IMPOSING UPON RESPONDENT THE PENALTY OF DISMISSAL FROM SERVICE, A PENALTY WHICH CAN ONLY BE IMPOSED UPON COMMISSION OF A SECOND OFFENSE. — Under AO 250, the penalty for the first offense is suspension for six (6) months and one (1) day to one (1) year, while the penalty for the second offense is dismissal. On the other hand, Section 22 (o), Rule XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 and Section 52 A (15) of the *Revised Uniform Rules on Administrative Cases in the Civil Service* both provide that the first offense of disgraceful and immoral conduct is punishable by suspension of six (6) months and one (1) day to one (1) year. A second offense is punishable by dismissal. Under the Labor Code, the Chairman of the NLRC shall hold office **during good behavior** until he or she reaches the age of sixty-five, **unless sooner removed for cause as provided by law** or becomes incapacitated to discharge the duties of the office. In this case, it is the President of the Philippines,

as the proper disciplining authority, who would determine whether there is a valid cause for the removal of Rayala as NLRC Chairman. This power, however, is qualified by the phrase "for cause as provided by law." Thus, when the President found that Rayala was indeed guilty of disgraceful and immoral conduct, the Chief Executive did not have unfettered discretion to impose a penalty other than the penalty provided by law for such offense. As cited above, the imposable penalty for the first offense of either the administrative offense of sexual harassment or for disgraceful and immoral conduct is suspension of six (6) months and one (1) day to one (1) year. Accordingly, it was error for the Office of the President to impose upon Rayala the penalty of dismissal from the service, a penalty which can only be imposed upon commission of a second offense. Even if the OP properly considered the fact that Rayala took advantage of his high government position, it still could not validly dismiss him from the service. Under the *Revised Uniform Rules on Administrative Cases in the Civil Service*, taking undue advantage of a subordinate may be considered as an aggravating circumstance and where only aggravating and no mitigating circumstances are present, the maximum penalty shall be imposed. Hence, the maximum penalty that can be imposed on Rayala is suspension for one (1) year.

13. ID.; ID.; ID.; RESPONDENT'S EFFORTS OF PUTTING THE COMPLAINANT'S CHARACTER IN QUESTION AND CASTING DOUBT ON THE MORALITY OF THE FORMER PRESIDENT WHO ERRONEOUSLY ORDERED HIS DISMISSAL FROM SERVICE ARE NOT SIGNIFICANT FACTORS IN THE DISPOSITION OF THE CASE; RESPONDENT'S CHARACTER IS IN QUESTION IN CASE AT BAR AND SADLY THE INQUIRY SHOWED THAT HE HAS BEEN FOUND WANTING. — Rayala holds the exalted position of NLRC Chairman, with the rank equivalent to a CA Justice. Thus, it is not unavailing that rigid standards of conduct may be demanded of him. In *Talens-Dabon v. Judge Arceo,* this Court, in upholding the liability of therein respondent Judge, said: "The actuations of respondent are aggravated by the fact that complainant is one of his subordinates over whom he exercises control and supervision, he being the executive judge. He took advantage of his position and power in order to carry out his lustful and lascivious desires. Instead of he being in *loco parentis* over his subordinate employees, respondent was

the one who preyed on them, taking advantage of his superior position." In yet another case, this Court declared: "As a managerial employee, petitioner is bound by more exacting work ethics. He failed to live up to his higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from oversexed superiors." It is incumbent upon the head of office to set an example on how his employees should conduct themselves in public office, so that they may work efficiently in a healthy working atmosphere. Courtesy demands that he should set a good example. Rayala has thrown every argument in the book in a vain effort to effect his exoneration. He even puts Domingo's character in question and casts doubt on the morality of the former President who ordered, albeit erroneously, his dismissal from the service. Unfortunately for him, these are not significant factors in the disposition of the case. It is his character that is in question here and sadly, the inquiry showed that he has been found wanting.

APPEARANCES OF COUNSEL

Evalyn G. Ursua for M.L. T. Domingo.
The Solicitor General for public respondent.

D E C I S I O N

NACHURA, *J.*:

Sexual harassment is an imposition of misplaced "superiority" which is enough to dampen an employee's spirit and her capacity for advancement. It affects her sense of judgment; it changes her life.[1]

Before this Court are three Petitions for Review on *Certiorari* assailing the October 18, 2002 Resolution of the CA's Former

[1] *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, 387 Phil. 256, 265 (2000).

Ninth Division[2] in CA-G.R. SP No. 61026. The Resolution modified the December 14, 2001 Decision[3] of the Court of Appeals' Eleventh Division, which had affirmed the Decision of the Office of the President (OP) dismissing from the service then National Labor Relations Commission (NLRC) Chairman Rogelio I. Rayala (Rayala) for disgraceful and immoral conduct.

All three petitions stem from the same factual antecedents.

On November 16, 1998, Ma. Lourdes T. Domingo (Domingo), then Stenographic Reporter III at the NLRC, filed a Complaint for sexual harassment against Rayala before Secretary Bienvenido Laguesma of the Department of Labor and Employment (DOLE).

To support the Complaint, Domingo executed an Affidavit narrating the incidences of sexual harassment complained of, thus:

x x x x x x x x x

4. Sa simula ay pabulong na sinasabihan lang ako ni Chairman Rayala ng mga salitang "Lot, gumaganda ka yata?"

5. Sa ibang mga pagkakataon nilalapitan na ako ni Chairman at hahawakan ang aking balikat sabay pisil sa mga ito habang ako ay nagta-type at habang nagbibigay siya ng diktasyon. Sa mga pagkakataong ito, kinakabahan ako. Natatakot na baka mangyari sa akin ang mga napapabalitang insidente na nangyari na noon tungkol sa mga sekretarya niyang nagbitiw gawa ng mga mahahalay na panghihipo ni Chairman.

6. Noong ika-10 ng Setyembre, 1998, nang ako ay nasa 8th Floor, may nagsabi sa akin na kailangan akong bumaba sa 7th Floor kung nasaan ang aming opisina dahil sa may koreksyon daw na gagawin sa mga papel na tinayp ko.

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[2] Special Division of Five. Resolution penned by Associate Justice Conrado M. Vasquez, Jr. Associate Justices Andres B. Reyes Jr., Edgardo P. Cruz, and Mario L. Guariña III voted for the modification of the December 14, 2001 Decision, while Associate Justices Vasquez and Amelita G. Tolentino, voted to affirm the same.

[3] Penned by Associate Justice Vasquez, Jr., with Associate Justices Reyes, Jr. and Tolentino, concurring.

Bumaba naman ako para gawin ito. Habang ginagawa ko ito, lumabas si Chairman Rayala sa silid ni Mr. Alex Lopez. Inutusan ako ni Chairman na sumunod sa kaniyang silid. Nang nasa silid na kami, sinabi niya sa akin:

Chairman: Lot, I like you a lot. Naiiba ka sa lahat.

At pagkatapos ako ay kaniyang inusisa tungkol sa mga personal na bagay sa aking buhay. Ang ilan dito ay tungkol sa aking mga magulang, kapatid, pag-aaral at kung may boyfriend na raw ba ako.

Chairman: May boyfriend ka na ba?
Lourdes: Dati nagkaroon po.
Chairman: Nasaan na siya?
Lourdes: Nag-asawa na ho.
Chairman: Bakit hindi kayo nagkatuluyan?
Lourdes: Nainip po.

Chairman: Pagkatapos mo ng kurso mo ay kumuha ka ng Law at ako ang bahala sa iyo, hanggang ako pa ang Chairman dito.

Pagkatapos ay kumuha siya ng pera sa kaniyang amerikana at inaabot sa akin.

Chairman: Kuhanin mo ito.
Lourdes: Huwag na ho hindi ko kailangan.
Chairman: Hindi sige, kuhanin mo. Ayusin mo ang dapat ayusin.

Tinanggap ko po ang pera ng may pag-aalinlangan. Natatakot at kinakabahan na kapag hindi ko tinanggap ang pera ay baka siya magagalit kasabay na rito ang pagtapon sa akin kung saan-saan opisina o kaya ay tanggalin ako sa posisyon.

Chairman: Paglabas mo itago mo ang pera. Ayaw ko ng may makaka-alam nito. Just the two of us.
Lourdes: Bakit naman, Sir?
Chairman: Basta. Maraming tsismosa diyan sa labas. But I don't give them a damn. Hindi ako mamatay sa kanila.

Tumayo na ako at lumabas. Pumanhik na ako ng 8th Floor at pumunta ako sa officemate ko na si Agnes Magdaet. Ikinwento ko ang nangyari sa akin sa opisina ni Chairman. Habang kinikwento ko ito kay Agnes ay binilang namin ang pera na nagkakahalaga

ng tatlong libong piso (PHP 3,000). Sinabi ni Agnes na isauli ko raw ang pera, pero ang sabi ko ay natatakot ako baka magalit si Sir. Nagsabi agad kami kay EC Perlita Velasco at sinalaysay ko ang nangyari. Sinabi niya na isauli ko ang pera at noong araw ding iyon ay nagpasiya akong isauli na nga ito ngunit hindi ako nagkaroon ng pagkakataon dahil marami siyang naging bisita. Isinauli ko nga ang pera noong Lunes, Setyembre 14, 1998.

7. Noong huling linggo ng Setyembre, 1998, ay may tinanong din sa akin si Chairman Rayala na hindi ko masikmura, at sa aking palagay at tahasang pambabastos sa akin.

Chairman: Lot, may ka live-in ka ba?
Lourdes: Sir, wala po.
Chairman: Bakit malaki ang balakang mo?
Lourdes: Kayo, Sir ha! Masama sa amin ang may ka live-in.
Chairman: Bakit, ano ba ang relihiyon ninyo?
Lourdes: Catholic, Sir. Kailangan ikasal muna.
Chairman: Bakit ako, hindi kasal.
Lourdes: Sir, di magpakasal kayo.
Chairman: Huh. Ibahin na nga natin ang usapan.

8. Noong Oktubre 29, 1998, ako ay pumasok sa kwarto ni Chairman Rayala. Ito ay sa kadahilanang ang fax machine ay nasa loob ng kaniyang kwarto. Ang nag-aasikaso nito, si Riza Ocampo, ay naka-leave kaya ako ang nag-asikaso nito noong araw na iyon. Nang mabigyan ko na ng fax tone yung kausap ko, pagharap ko sa kanan ay nakaharang sa dadaanan ko si Chairman Rayala. Tinitingnan ako sa mata at ang titig niya ay umuusad mula ulo hanggang dibdib tapos ay ngumiti na may mahalay na pakahulugan.

9. Noong hapon naman ng pareho pa ring petsa, may nag-aapply na sekretarya sa opisina, sinabi ko ito kay Chairman Rayala:

Lourdes: Sir, si Pinky po yung applicant, mag-papainterview po yata sa inyo.
Chairman: Sabihin mo magpa-pap smear muna siya
Chairman: O sige, i-refer mo kay Alex. (Alex Lopez, Chief of Staff).

10. Noong Nobyembre 9, 1998, ako ay tinawag ni Chairman Rayala sa kaniyang opisina upang kuhanin ko ang diktasyon niya para kay ELA Oscar Uy. Hindi pa kami nakakatapos ng unang talata, may pumasok na bisita si Chairman, si Baby Pangilinan na sinamahan ni Riza Ocampo. Pinalabas muna ako ni Chairman.

Nang maka-alis na si Ms. Pangilinan, pinapasok na niya ako ulit. Umupo ako. Lumapit sa likuran ko si Chairman, hinawakan ang kaliwang balikat ko na pinipisil ng kanang kamay niya at sinabi:

Chairman: Saan na ba tayo natapos?

Palakad-lakad siya sa aking likuran habang nag-didikta. Huminto siya pagkatapos, at nilagay niya ang kanang kamay niya sa aking kanang balikat at pinisil-pisil ito pagkatapos ay pinagapang niya ito sa kanang bahagi ng aking leeg, at pinagapang hanggang kanang tenga at saka kiniliti. Dito ko inalis ang kaniyang kamay sa pamamagitan ng aking kaliwang kamay. At saka ko sinabi:

Lourdes: Sir, yung kamay ninyo alisin niyo!

Natapos ko rin ang liham na pinagagawa niya pero halos hindi ko na maintindihan ang na-isulat ko dahil sa takot at inis na nararamdaman ko.[4]

After the last incident narrated, Domingo filed for leave of absence and asked to be immediately transferred. Thereafter, she filed the Complaint for sexual harassment on the basis of Administrative Order No. 250, the *Rules and Regulations Implementing RA 7877 in the Department of Labor and Employment*.

Upon receipt of the Complaint, the DOLE Secretary referred the Complaint to the OP, Rayala being a presidential appointee. The OP, through then Executive Secretary Ronaldo Zamora, ordered Secretary Laguesma to investigate the allegations in the Complaint and create a committee for such purpose. On December 4, 1998, Secretary Laguesma issued Administrative Order (AO) No. 280, Series of 1998,[5] constituting a Committee on Decorum and Investigation (Committee) in accordance with Republic Act (RA) 7877, the *Anti-Sexual Harassment Act of 1995*.[6]

The Committee heard the parties and received their respective evidence. On March 2, 2000, the Committee submitted its report

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[4] *Rollo* (G.R. No. 155840), pp. 142-144.

[5] *Id.* at 162.

[6] The case was docketed as DOLE O.S. Adm. Case No. 02-0122298.

and recommendation to Secretary Laguesma. It found Rayala guilty of the offense charged and recommended the imposition of the minimum penalty provided under AO 250, which it erroneously stated as suspension for six (6) months.

The following day, Secretary Laguesma submitted a copy of the Committee Report and Recommendation to the OP, but with the recommendation that the penalty should be suspension for six (6) months and one (1) day, in accordance with AO 250.

On May 8, 2000, the OP, through Executive Secretary Zamora, issued AO 119,[7] the pertinent portions of which read:

> Upon a careful scrutiny of the evidence on record, I concur with the findings of the Committee as to the culpability of the respondent [Rayala], the same having been established by clear and convincing evidence. However, I disagree with the recommendation that respondent be meted only the penalty of suspension for six (6) months and one (1) day considering the circumstances of the case.
>
> What aggravates respondent's situation is the undeniable circumstance that he took advantage of his position as the superior of the complainant. Respondent occupies the highest position in the NLRC, being its Chairman. As head of said office, it was incumbent upon respondent to set an example to the others as to how they should conduct themselves in public office, to see to it that his subordinates work efficiently in accordance with Civil Service Rules and Regulations, and to provide them with healthy working atmosphere wherein co-workers treat each other with respect, courtesy and cooperation, so that in the end the public interest will be benefited (*City Mayor of Zamboanga vs. Court of Appeals*, 182 SCRA 785 [1990]).
>
> What is more, public service requires the utmost integrity and strictest discipline (*Gano vs. Leonen*, 232 SCRA 99 [1994]). Thus, a public servant must exhibit at all times the highest sense of honesty and integrity, and "utmost devotion and dedication to duty" (Sec. 4 (g), RA 6713), respect the rights of others and shall refrain from doing acts contrary to law, and good morals (Sec. 4(c)). No less than the Constitution sanctifies the principle that a public office is

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[7] Denominated as OP Case No. 00-E-9118; *rollo* (G.R. No. 155840), pp. 238-243.

a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency (Section 1, Article XI, 1987 Constitution).

Given these established standards, I see respondent's acts not just [as] a failure to give due courtesy and respect to his co-employees (subordinates) or to maintain good conduct and behavior but defiance of the basic norms or virtues which a government official must at all times uphold, one that is contrary to law and "public sense of morality." Otherwise stated, respondent — to whom stricter standards must apply being the highest official [of] the NLRC — had shown an attitude, a frame of mind, a disgraceful conduct, which renders him unfit to remain in the service.

WHEREFORE, in view of the foregoing, respondent Rogelio I. Rayala, Chairman, National Labor Relations Commission, is found guilty of the grave offense of disgraceful and immoral conduct and is hereby **DISMISSED** from the service effective upon receipt of this Order.

SO ORDER[ED].

Rayala filed a Motion for Reconsideration, which the OP denied in a Resolution[8] dated May 24, 2000. He then filed a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order under Rule 65 of the Revised Rules on Civil Procedure before this Court on June 14, 2000.[9] However, the same was dismissed in a Resolution dated June 26, 2000 for disregarding the hierarchy of courts.[10] Rayala filed a Motion for Reconsideration[11] on August 15, 2000. In its Resolution[12] dated September 4, 2000, the Court recalled its June 26 Resolution and referred the petition to the Court of Appeals (CA) for appropriate action.

The CA rendered its Decision[13] on December 14, 2001. It held that there was sufficient evidence on record to create moral

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[8] *Rollo* (G.R. No. 155840), pp. 265-266.

[9] Docketed as G.R. No. 143358, *id*. at 75-140.

[10] *Id*. at 176-A.

[11] *Id*. at 273-296.

[12] *Id*. at 297.

[13] *Rollo* (G.R. No. 155831), pp. 32-40.

certainty that Rayala committed the acts he was charged with. It said:

> The complainant narrated her story complete with details. Her straightforward and uninhibited testimony was not emasculated by the declarations of Commissioner Rayala or his witnesses. x x x
>
> Moreover, Commissioner Rayala has not proven any vicious motive for Domingo and her witnesses to invent their stories. It is very unlikely that they would perjure themselves only to accommodate the alleged conspiracy to oust petitioner from office. Save for his empty conjectures and speculations, Rayala failed to substantiate his contrived conspiracy. It is a hornbook doctrine that conspiracy must be proved by positive and convincing evidence (*People v. Noroña, 329 SCRA 502 [2000]*). Besides, it is improbable that the complainant would concoct a story of sexual harassment against the highest official of the NLRC and thereby expose herself to the possibility of losing her job, or be the subject of reprisal from her superiors and perhaps public ridicule if she was not telling the truth.

It also held that Rayala's dismissal was proper. The CA pointed out that Rayala was dismissed for disgraceful and immoral conduct in violation of RA 6713, the *Code of Conduct and Ethical Standards for Public Officials and Employees*. It held that the OP was correct in concluding that Rayala's acts violated RA 6713:

> Indeed, [Rayala] was a public official, holding the Chairmanship of the National Labor Relations Commission, entrusted with the sacred duty of administering justice. Occupying as he does such an exalted position, Commissioner Rayala must pay a high price for the honor bestowed upon him. He must comport himself at all times in such a manner that the conduct of his everyday life should be beyond reproach and free from any impropriety. That the acts complained of were committed within the sanctuary of [his] office compounded the objectionable nature of his wrongdoing. By daring to violate the complainant within the solitude of his chambers, Commissioner Rayala placed the integrity of his office in disrepute. His disgraceful and immoral conduct warrants his removal from office.[14]

Thus, it dismissed the petition, to wit:

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[14] *Id*. at 38.

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby DISMISSED and Administrative Order No. 119 as well [as] the Resolution of the Office of the President in O.P. Case No. 00-E-9118 dated May 24, 2000 are AFFIRMED *IN TOTO*. No cost.

SO ORDERED.[15]

Rayala timely filed a Motion for Reconsideration. Justices Vasquez and Tolentino voted to affirm the December 14 Decision. However, Justice Reyes dissented mainly because AO 250 states that the penalty imposable is suspension for six (6) months and one (1) day.[16] Pursuant to the internal rules of the CA, a Special Division of Five was constituted.[17] In its October 18, 2002 Resolution, the CA modified its earlier Decision:

ACCORDINGLY, the Decision dated December [14], 2001 is MODIFIED to the effect that the penalty of dismissal is DELETED and instead the penalty of suspension from service for the maximum period of one (1) year is HEREBY IMPOSED upon the petitioner. The rest of the challenged decision stands.

SO ORDERED.

Domingo filed a Petition for Review[18] before this Court, which we denied in our February 19, 2003 Resolution for having a defective verification. She filed a Motion for Reconsideration, which the Court granted; hence, the petition was reinstated.

Rayala likewise filed a Petition for Review[19] with this Court essentially arguing that he is not guilty of any act of sexual harassment.

Meanwhile, the Republic filed a Motion for Reconsideration of the CA's October 18, 2002 Resolution. The CA denied the

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[15] *Id*. at 40.

[16] *Id*. at 29.

[17] Composed of Associate Justices Vasquez, Jr., Reyes, Jr., and Tolentino, with additional members Associate Justices Edgardo P. Cruz and Mario L. Guariña III.

[18] G.R. No. 155831.

[19] G.R. No. 155840.

same in its June 3, 2003 Resolution, the dispositive portion of which reads:

ACCORDINGLY, by a majority vote, public respondents' Motion for Reconsideration, (sic) is **DENIED**.

SO ORDERED.

The Republic then filed its own Petition for Review.[20]

On June 28, 2004, the Court directed the consolidation of the three (3) petitions.

G.R. No. 155831

Domingo assails the CA's resolution modifying the penalty imposed by the Office of the President. She raises this issue:

The Court of Appeals erred in modifying the penalty for the respondent from dismissal to suspension from service for the maximum period of one year. The President has the prerogative to determine the proper penalty to be imposed on an erring Presidential appointee. The President was well within his power when he fittingly used that prerogative in deciding to dismiss the respondent from the service.[21]

She argues that the power to remove Rayala, a presidential appointee, is lodged with the President who has control of the entire Executive Department, its bureaus and offices. The OP's decision was arrived at after affording Rayala due process. Hence, his dismissal from the service is a prerogative that is entirely with the President.[22]

As to the applicability of AO No. 250, she argues that the same was not intended to cover cases against presidential appointees. AO No. 250 refers only to the instances wherein the DOLE Secretary is the disciplining authority, and thus, the AO does not circumscribe the power of the President to dismiss an erring presidential appointee.

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[20] G.R. No. 158700.

[21] *Rollo* (G.R. No. 155831), p. 16.

[22] *Id.* at 19-20.

G.R. No. 155840

In his petition, Rayala raises the following issues:

I. **CONTRARY TO THE FINDINGS OF THE COURT OF APPEALS, THE ACTS OF HEREIN PETITIONER DO NOT CONSTITUTE SEXUAL HARASSMENT AS LAID DOWN BY THE *En Banc* RULING IN THE CASE OF *AQUINO vs. ACOSTA, ibid.,* AS WELL AS IN THE APPLICATION OF EXISTING LAWS.**

II. **CONTRARY TO THE FINDINGS OF THE HONORABLE COURT OF APPEALS, INTENT IS AN INDISPENSABLE ELEMENT IN A CASE FOR SEXUAL HARASSMENT. THE HONORABLE COURT ERRED IN ITS FINDING THAT IT IS AN OFFENSE THAT IS *MALUM PROHIBITUM*.**

III. **THE INVESTIGATION COMMITTEE, THE OFFICE OF THE PRESIDENT, AND NOW, THE HONORABLE COURT OF APPEALS, HAS MISAPPLIED AND EXPANDED THE DEFINITION OF SEXUAL HARASSMENT IN THE WORKPLACE UNDER R.A. No. 7877, BY APPLYING DOLE A.O. 250, WHICH RUNS COUNTER TO THE RECENT PRONOUNCEMENTS OF THIS HONORABLE SUPREME COURT.**[23]

Invoking *Aquino v. Acosta*,[24] Rayala argues that the case is the definitive ruling on what constitutes sexual harassment. Thus, he posits that for sexual harassment to exist under RA 7877, there must be: (a) demand, request, or requirement of a sexual favor; (b) the same is made a pre-condition to hiring, re-employment, or continued employment; or (c) the denial thereof results in discrimination against the employee.

Rayala asserts that Domingo has failed to allege and establish any sexual favor, demand, or request from petitioner in exchange for her continued employment or for her promotion. According to Rayala, the acts imputed to him are without malice or ulterior

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[23] *Rollo* (G.R. No. 155840), pp. 24-25.

[24] 429 Phil. 498, 508-509 (2002).

motive. It was merely Domingo's perception of malice in his alleged acts — a "product of her own imagination"[25] — that led her to file the sexual harassment complaint.

Likewise, Rayala assails the OP's interpretation, as upheld by the CA, that RA 7877 is *malum prohibitum* such that the defense of absence of malice is unavailing. He argues that sexual harassment is considered an offense against a particular person, not against society as a whole. Thus, he claims that intent is an essential element of the offense because the law requires as a *conditio sine qua non* that a sexual favor be first sought by the offender in order to achieve certain specific results. Sexual harassment is committed with the perpetrator's deliberate intent to commit the offense.[26]

Rayala next argues that AO 250 expands the acts proscribed in RA 7877. In particular, he assails the definition of the forms of sexual harassment:

Rule IV

FORMS OF SEXUAL HARASSMENT

Section 1. ***Forms of Sexual Harassment***. — Sexual harassment may be committed in any of the following forms:

a) Overt sexual advances;

b) Unwelcome or improper gestures of affection;

c) Request or demand for sexual favors including but not limited to going out on dates, outings or the like for the same purpose;

d) Any other act or conduct of a sexual nature or for purposes of sexual gratification which is generally annoying, disgusting or offensive to the victim.[27]

He posits that these acts alone without corresponding demand, request, or requirement do not constitute sexual harassment as

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[25] *Rollo* (G.R. No. 155840), p. 33.

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

[27] Rule IV, Section 1, AO 250.

contemplated by the law.[28] He alleges that the rule-making power granted to the employer in Section 4(a) of RA 7877 is limited only to procedural matters. The law did not delegate to the employer the power to promulgate rules which would provide other or additional forms of sexual harassment, or to come up with its own definition of sexual harassment.[29]

G.R. No. 158700

The Republic raises this issue:

Whether or not the President of the Philippines may validly dismiss respondent Rayala as Chairman of the NLRC for committing acts of sexual harassment.[30]

The Republic argues that Rayala's acts constitute sexual harassment under AO 250. His acts constitute unwelcome or improper gestures of affection and are acts or conduct of a sexual nature, which are generally annoying or offensive to the victim.[31]

It also contends that there is no legal basis for the CA's reduction of the penalty imposed by the OP. Rayala's dismissal is valid and warranted under the circumstances. The power to remove the NLRC Chairman solely rests upon the President, limited only by the requirements under the law and the due process clause.

The Republic further claims that, although AO 250 provides only a one (1) year suspension, it will not prevent the OP from validly imposing the penalty of dismissal on Rayala. It argues that even though Rayala is a presidential appointee, he is still subject to the Civil Service Law. Under the Civil Service Law, disgraceful and immoral conduct, the acts imputed to Rayala, constitute grave misconduct punishable by dismissal from the

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[28] *Rollo* (G.R. No. 155840), pp. 59-60.

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

[30] *Rollo* (G.R. No. 158700), p. 11.

[31] *Id.* at 13.

service.[32] The Republic adds that Rayala's position is invested with public trust and his acts violated that trust; thus, he should be dismissed from the service.

This argument, according to the Republic, is also supported by Article 215 of the Labor Code, which states that the Chairman of the NLRC holds office until he reaches the age of 65 only during good behavior.[33] Since Rayala's security of tenure is conditioned upon his good behavior, he may be removed from office if it is proven that he has failed to live up to this standard.

All the issues raised in these three cases can be summed up in two ultimate questions, namely:

(1) Did Rayala commit sexual harassment?
(2) If he did, what is the applicable penalty?

Initially, however, we must resolve a procedural issue raised by Rayala. He accuses the Office of the Solicitor General (OSG), as counsel for the Republic, of forum shopping because it filed a motion for reconsideration of the decision in CA-G.R. SP No. 61026 and then filed a comment in G.R. No. 155840 before this Court.

We do not agree.

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*.[34] It consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[35]

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[32] *Id*. at 22.

[33] *Id*. at 29.

[34] *Santos v. Comelec*, G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493, citing *Repol v. Commission on Elections*, 428 SCRA 321 (2004).

[35] *Young v. Spouses Sy*, G.R. No. 157745 and G.R. No. 157955, September 26, 2006, 503 SCRA 151, 166, citing *Guaranteed Hotels, Inc. v. Baltao*, 448 SCRA 738, 743 (2005).

There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.[36]

Reviewing the antecedents of these consolidated cases, we note that the CA rendered the assailed Resolution on October 18, 2002. The Republic filed its Motion for Reconsideration on November 22, 2002. On the other hand, Rayala filed his petition before this Court on November 21, 2002. While the Republic's Motion for Reconsideration was pending resolution before the CA, on December 2, 2002, it was directed by this Court to file its Comment on Rayala's petition, which it submitted on June 16, 2003.

When the CA denied the Motion for Reconsideration, the Republic filed its own Petition for Review with this Court on July 3, 2003. It cited in its "Certification and Verification of a Non-Forum Shopping" (sic), that there was a case involving the same facts pending before this Court denominated as G.R. No. 155840. With respect to Domingo's petition, the same had already been dismissed on February 19, 2003. Domingo's petition was reinstated on June 16, 2003 but the resolution was received by the OSG only on July 25, 2003, or after it had filed its own petition.[37]

Based on the foregoing, it cannot be said that the OSG is guilty of forum shopping. We must point out that it was Rayala

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[36] *PAL Employees Savings and Loan Association v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, 646-647, citing *Philippine Nails and Wires Corporation v. Malayan Insurance Co., Inc.*, 445 Phil. 465 (2003); *Prubankers Association v. Prudential Bank and Trust Company*, 361 Phil. 744, 755 (1999); *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 307 (1996).

[37] *Rollo* (G.R. No. 158700), p. 158.

who filed the petition in the CA, with the Republic as the adverse party. Rayala himself filed a motion for reconsideration of the CA's December 21, 2001 Decision, which led to a more favorable ruling, *i.e.*, the lowering of the penalty from dismissal to one-year suspension. The parties adversely affected by this ruling (Domingo and the Republic) had the right to question the same on motion for reconsideration. But Domingo directly filed a Petition for Review with this Court, as did Rayala. When the Republic opted to file a motion for reconsideration, it was merely exercising a right. That Rayala and Domingo had by then already filed cases before the SC did not take away this right. Thus, when this Court directed the Republic to file its Comment on Rayala's petition, it had to comply, even if it had an unresolved motion for reconsideration with the CA, lest it be cited for contempt.

Accordingly, it cannot be said that the OSG "file[d] multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."

We now proceed to discuss the substantive issues.

It is noteworthy that the five CA Justices who deliberated on the case were unanimous in upholding the findings of the Committee and the OP. They found the assessment made by the Committee and the OP to be a "meticulous and dispassionate analysis of the testimonies of the complainant (Domingo), the respondent (Rayala), and their respective witnesses."[38] They differed only on the appropriate imposable penalty.

That Rayala committed the acts complained of — and was guilty of sexual harassment — is, therefore, the common factual finding of not just one, but three independent bodies: the Committee, the OP and the CA. It should be remembered that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great

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[38] Court of Appeals Decision dated December 14, 2001, *rollo* (G.R. No. 155831), p. 36.

respect and even finality by the courts.[39] The principle, therefore, dictates that such findings should bind us.[40]

Indeed, we find no reason to deviate from this rule. There appears no valid ground for this Court to review the factual findings of the CA, the OP, and the Investigating Committee. These findings are now conclusive on the Court. And quite significantly, Rayala himself admits to having committed some of the acts imputed to him.

He insists, however, that these acts do not constitute sexual harassment, because Domingo did not allege in her complaint that there was a demand, request, or requirement of a sexual favor as a condition for her continued employment or for her promotion to a higher position.[41] Rayala urges us to apply to his case our ruling in *Aquino v. Acosta*.[42]

We find respondent's insistence unconvincing.

Basic in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others.[43] This rule applies with full force to sexual harassment.

The law penalizing sexual harassment in our jurisdiction is RA 7877. Section 3 thereof defines work-related sexual harassment in this wise:

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[39] *R & E Transport, Inc. v. Latag*, 467 Phil. 355, 364 (2004), citing *Pabu-aya v. Court of Appeals*, 356 SCRA 651, 657 (2001); *Philtranco Service Enterprises, Inc. v. National Labor Relations Commission*, 351 Phil. 827, 835 (1998); *Philippine Airlines, Inc. v. National Labor Relations Commission*, 344 Phil. 860, 873 (1997).

[40] See *Insurance Services and Commercial Traders, Inc. v. Court of Appeals*, 395 Phil. 791, 801 (2000).

[41] *Rollo* (G.R. No. 155840), p. 1138.

[42] *Supra* note 24.

[43] *Office of the Court Administrator v. Enriquez*, Adm. Matter No. P-89-290, January 29, 1993, 218 SCRA 1.

Sec. 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

This section, in relation to Section 7 on penalties, defines the criminal aspect of the unlawful act of sexual harassment. The same section, in relation to Section 6, authorizes the institution of an independent civil action for damages and other affirmative relief.

Section 4, also in relation to Section 3, governs the procedure for administrative cases, *viz.*:

Sec. 4. *Duty of the Employer or Head of Office in a Work-related, Education or Training Environment.* — It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:

(a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation or sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this section (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

(b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with other officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of the alleged cases constituting sexual harassment.

In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainors, teachers, instructors, professors or coaches and students or trainees, as the case maybe.

The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

The CA, thus, correctly ruled that Rayala's culpability is not to be determined solely on the basis of Section 3, RA 7877, because he is charged with the administrative offense, not the criminal infraction, of sexual harassment.[44] It should be enough

[44] *Rollo* (G.R. No. 155831), p. 39.

that the CA, along with the Investigating Committee and the Office of the President, found substantial evidence to support the administrative charge.

Yet, even if we were to test Rayala's acts strictly by the standards set in Section 3, RA 7877, he would still be administratively liable. It is true that this provision calls for a "demand, request or requirement of a sexual favor." But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones — all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.

Likewise, contrary to Rayala's claim, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee.[45] That the acts of Rayala generated an intimidating and hostile environment for Domingo is clearly shown by the common factual finding of the Investigating Committee, the OP and the CA that Domingo reported the matter to an officemate and, after the last incident, filed for a leave of absence and requested transfer to another unit.

Rayala's invocation of *Aquino v. Acosta*[46] is misplaced, because the factual setting in that case is different from that in the case at bench. In *Aquino*, Atty. Susan Aquino, Chief of the Legal and Technical Staff of the Court of Tax Appeals (CTA), charged then CTA Presiding Judge (now Presiding Justice) Ernesto Acosta of sexual harassment. She complained of several incidents when

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[45] REPUBLIC ACT 7877, Sec. 3 (a) (3); AO 250, Rule III, Sec. 3 (d).

[46] *Supra* note 24.

Judge Acosta allegedly kissed her, embraced her, and put his arm around her shoulder. The case was referred to CA Justice Josefina G. Salonga for investigation. In her report, Justice Salonga found that "the complainant failed to show by convincing evidence that the acts of Judge Acosta in greeting her with a kiss on the cheek, in a '*beso-beso*' fashion, were carried out with lustful and lascivious desires or were motivated by malice or ill motive. It is clear from the circumstances that most of the kissing incidents were done on festive and special occasions," and they "took place in the presence of other people and the same was by reason of the exaltation or happiness of the moment." Thus, Justice Salonga concluded:

> In all the incidents complained of, the respondent's pecks on the cheeks of the complainant should be understood in the context of having been done on the occasion of some festivities, and not the assertion of the latter that she was singled out by Judge Acosta in his kissing escapades. The busses on her cheeks were simply friendly and innocent, bereft of malice and lewd design. The fact that respondent judge kisses other people on the cheeks in the '*beso-beso*' fashion, without malice, was corroborated by Atty. Florecita P. Flores, Ms. Josephine Adalem and Ms. Ma. Fides Balili, who stated that they usually practice '*beso-beso*' or kissing on the cheeks, as a form of greeting on occasions when they meet each other, like birthdays, Christmas, New Year's Day and even Valentine's Day, and it does not matter whether it is Judge Acosta's birthday or their birthdays. Theresa Cinco Bactat, a lawyer who belongs to complainant's department, further attested that on occasions like birthdays, respondent judge would likewise greet her with a peck on the cheek in a '*beso-beso*' manner. Interestingly, in one of several festive occasions, female employees of the CTA pecked respondent judge on the cheek where Atty. Aquino was one of Judge Acosta's well wishers.
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> In sum, no sexual harassment had indeed transpired on those six occasions. Judge Acosta's acts of bussing Atty. Aquino on her cheek were merely forms of greetings, casual and customary in nature. No evidence of intent to sexually harass complainant was apparent, only that the innocent acts of '*beso-beso*' were given malicious connotations by the complainant. In fact, she did not even relate to

anyone what happened to her. Undeniably, there is no manifest sexual undertone in all those incidents.[47]

This Court agreed with Justice Salonga, and Judge Acosta was exonerated.

To repeat, this factual milieu in *Aquino* does not obtain in the case at bench. While in *Aquino*, the Court interpreted the acts (of Judge Acosta) as casual gestures of friendship and camaraderie, done during festive or special occasions and with other people present, in the instant case, Rayala's acts of holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, and the inappropriate comments, were all made in the confines of Rayala's office when no other members of his staff were around. More importantly, and a circumstance absent in *Aquino*, Rayala's acts, as already adverted to above, produced a hostile work environment for Domingo, as shown by her having reported the matter to an officemate and, after the last incident, filing for a leave of absence and requesting transfer to another unit.

Rayala also argues that AO 250 does not apply to him. First, he argues that AO 250 does not cover the NLRC, which, at the time of the incident, was under the DOLE only for purposes of program and policy coordination. Second, he posits that even assuming AO 250 is applicable to the NLRC, he is not within its coverage because he is a presidential appointee.

We find, however, that the question of whether or not AO 250 covers Rayala is of no real consequence. The events of this case unmistakably show that the administrative charges against Rayala were for violation of RA 7877; that the OP properly assumed jurisdiction over the administrative case; that the participation of the DOLE, through the Committee created by the Secretary, was limited to initiating the investigation process, reception of evidence of the parties, preparation of the investigation report, and recommending the appropriate action to be taken by the OP. AO 250 had never really been applied to Rayala.

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[47] *Id*. at 8-9.

If it was used at all, it was to serve merely as an auxiliary procedural guide to aid the Committee in the orderly conduct of the investigation.

Next, Rayala alleges that the CA erred in holding that sexual harassment is an offense *malum prohibitum*. He argues that intent is an essential element in sexual harassment, and since the acts imputed to him were done allegedly without malice, he should be absolved of the charges against him.

We reiterate that what is before us is an *administrative* case for sexual harassment. Thus, whether the *crime* of sexual harassment is *malum in se* or *malum prohibitum* is immaterial.

We also reject Rayala's allegations that the charges were filed because of a conspiracy to get him out of office and thus constitute merely political harassment. A conspiracy must be proved by clear and convincing evidence. His bare assertions cannot stand against the evidence presented by Domingo. As we have already ruled, the acts imputed to Rayala have been proven as fact. Moreover, he has not proven any ill motive on the part of Domingo and her witnesses which would be ample reason for her to conjure stories about him. On the contrary, ill motive is belied by the fact that Domingo and her witnesses — all employees of the NLRC at that time — stood to lose their jobs or suffer unpleasant consequences for coming forward and charging their boss with sexual harassment.

Furthermore, Rayala decries the alleged violation of his right to due process. He accuses the Committee on Decorum of railroading his trial for violation of RA 7877. He also scored the OP's decision finding him guilty of "disgraceful and immoral conduct" under the Revised Administrative Code and not for violation of RA 7877. Considering that he was not tried for "disgraceful and immoral conduct," he argues that the verdict is a "sham and total nullity."

We hold that Rayala was properly accorded due process. In previous cases, this Court held that:

> [i]n administrative proceedings, due process has been recognized to include the following: (1) the right to actual or constructive

notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[48]

The records of the case indicate that Rayala was afforded all these procedural due process safeguards. Although in the beginning he questioned the authority of the Committee to try him,[49] he appeared, personally and with counsel, and participated in the proceedings.

On the other point raised, this Court has held that, even in criminal cases, the designation of the offense is not controlling, thus:

What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information

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[48] *Fabella v. Court of Appeals,* 346 Phil. 940, 952-953 (1997).

[49] He filed a petition for the creation of a new Committee on Decorum and Investigation composed of his peers (*rollo* [G.R. No. 155840], pp. 171-177]). This was denied by Secretary Laguesma saying that the Committee was created pursuant to the directive of the OP and its composition was in accord with Section 4 of RA 7877 (pp. 210-203 (sic)).

is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.[50]

It is noteworthy that under AO 250, sexual harassment amounts to disgraceful and immoral conduct.[51] Thus, any finding of liability for sexual harassment may also be the basis of culpability for disgraceful and immoral conduct.

With the foregoing disquisitions affirming the finding that Rayala committed sexual harassment, we now determine the proper penalty to be imposed.

Rayala attacks the penalty imposed by the OP. He alleges that under the pertinent Civil Service Rules, disgraceful and immoral conduct is punishable by suspension for a period of six (6) months and one (1) day to one (1) year. He also argues that since he is charged administratively, aggravating or mitigating circumstances cannot be appreciated for purposes of imposing the penalty.

Under AO 250, the penalty for the first offense is suspension for six (6) months and one (1) day to one (1) year, while the penalty for the second offense is dismissal.[52] On the other hand, Section 22(o), Rule XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987[53] and Section 52 A(15) of the *Revised Uniform Rules on Administrative Cases in the Civil Service*[54] both provide that the first offense of disgraceful and immoral conduct is punishable by suspension of six (6) months and one (1) day to one (1) year. A second offense is punishable by dismissal.

Under the Labor Code, the Chairman of the NLRC shall hold office **during good behavior** until he or she reaches the

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[50] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-668.

[51] AO 250, Rule VI, Sec. 8.

[52] *Id*.

[53] Executive Order No. 292.

[54] Civil Service Commission Memorandum Circular No. 19-99.

age of sixty-five, **unless sooner removed for cause as provided by law** or becomes incapacitated to discharge the duties of the office.[55]

In this case, it is the President of the Philippines, as the proper disciplining authority, who would determine whether there is a valid cause for the removal of Rayala as NLRC Chairman. This power, however, is qualified by the phrase "for cause as provided by law." Thus, when the President found that Rayala was indeed guilty of disgraceful and immoral conduct, the Chief Executive did not have unfettered discretion to impose a penalty other than the penalty provided by law for such offense. As cited above, the imposable penalty for the first offense of either the administrative offense of sexual harassment or for disgraceful and immoral conduct is suspension of six (6) months and one (1) day to one (1) year. Accordingly, it was error for the Office of the President to impose upon Rayala the penalty of dismissal from the service, a penalty which can only be imposed upon commission of a second offense.

Even if the OP properly considered the fact that Rayala took advantage of his high government position, it still could not validly dismiss him from the service. Under the *Revised Uniform Rules on Administrative Cases in the Civil Service*,[56] taking undue advantage of a subordinate may be considered as an aggravating circumstance[57] and where only aggravating and no mitigating circumstances are present, the maximum penalty shall be imposed.[58] Hence, the maximum penalty that can be imposed on Rayala is suspension for one (1) year.

Rayala holds the exalted position of NLRC Chairman, with the rank equivalent to a CA Justice. Thus, it is not unavailing that rigid standards of conduct may be demanded of him. In

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[55] Section 215, Presidential Decree No. 442 (The Labor Code of the Philippines), as amended. (Emphasis supplied)

[56] *Supra* note 54.

[57] Section 53, *id*.

[58] Section 54 (c), *id*.

Talens-Dabon v. Judge Arceo,[59] this Court, in upholding the liability of therein respondent Judge, said:

> The actuations of respondent are aggravated by the fact that complainant is one of his subordinates over whom he exercises control and supervision, he being the executive judge. He took advantage of his position and power in order to carry out his lustful and lascivious desires. Instead of he being in *loco parentis* over his subordinate employees, respondent was the one who preyed on them, taking advantage of his superior position.

In yet another case, this Court declared:

> As a managerial employee, petitioner is bound by more exacting work ethics. He failed to live up to his higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from oversexed superiors.[60]

It is incumbent upon the head of office to set an example on how his employees should conduct themselves in public office, so that they may work efficiently in a healthy working atmosphere. Courtesy demands that he should set a good example.[61]

Rayala has thrown every argument in the book in a vain effort to effect his exoneration. He even puts Domingo's character in question and casts doubt on the morality of the former President who ordered, albeit erroneously, his dismissal from the service. Unfortunately for him, these are not significant factors in the disposition of the case. It is his character that is in question here and sadly, the inquiry showed that he has been found wanting.

WHEREFORE, the foregoing premises considered, the October 18, 2002 Resolution of the Court of Appeals in CA-G.R. SP

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[59] 328 Phil. 692, 708 (1996).

[60] *Villarama v. Golden Donuts*, G.R. No. 106341, September 2, 1994.

[61] Guidelines on Proper Decorum, Annex A, Administrative Order No. 250, Rules and Regulations Implementing RA 7877 (*Anti-Sexual Harassment Act of 1995*) in the Department of Labor and Employment.

No. 61026 is *AFFIRMED*. Consequently, the petitions in G.R. Nos. 155831, 155840, and 158700 are *DENIED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Corona,[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 156613. February 18, 2008]

MALAYANG KAPISANAN NG MGA MANGGAGAWA SA ASSOCIATED ANGLO AMERICAN TOBACCO CORPORATION (MAKAMANGGAGAWA), JAIME BERMUDEZ, *ET AL.*, *petitioners, vs.* **ASSOCIATED ANGLO AMERICAN TOBACCO CORPORATION AND/OR FLORENTE DY, ALICIA LIM and ALEX DY,** *respondents.*[**]

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SAID REMEDY IS NOT A SUBSTITUTE FOR A LOST APPEAL; CASE AT BAR. — It is true that **under justifiable circumstances**, the Court has relaxed the rule requiring all petitioners to affix their signature to the certification on non-forum shopping. Recently, the Court has deemed it proper to relax said rule by considering the signature of only one among numerous petitioners as substantial compliance in cases where

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[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 484, dated January 11, 2008.

[**] The Court of Appeals is excluded from the title of the petition, per Section 4, Rule 45 of the Rules of Court.

all petitioners share a common interest and invoke a common cause of action or defense. In the present case, petitioners do share a common cause of action, that of illegal dismissal. However, a petition for *certiorari* under Rule 65 of the Rules of Court may be resorted to **only** if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. in the present case, petitioners could have appealed to this Court by filing a petition for review on *certiorari* under Rule 45. No such petition was filed within the reglementary period, thus, the CA Decision became final and executory. Neither did petitioners convince the Court of the substantial merits of the action or complaint filed with the NLRC. The Labor Arbiter dismissed their complaint on the ground of *litis pendentia* and/or forum shopping. This finding was affirmed *in toto* by the NLRC. In their petition and Memorandum submitted to this Court, petitioners never discussed why they believe both the Labor Arbiter and the NLRC erred in finding them guilty of forum shopping. Clearly, just like in *Macawiag*, this petition is merely a substitute for a lost appeal and should be dismissed.

APPEARANCES OF COUNSEL

Lagman Lagman and Mones Law Firm for petitioners.
Bacay Ligan Law Offices for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks the nullification of the Resolution[1] of the Court of Appeals (CA) dated June 5, 2002 dismissing the petition for *certiorari* filed by Malayang Kapisanan ng mga Manggagawa sa Associated Anglo American Tobacco Corporation (the Union) for failure to comply with Sections 4 and 5, Rule 7

[1] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eubulo G. Verzola and Josefina Guevara-Salonga, concurring; *rollo*, pp. 30-32.

of the 1997 Rules of Civil Procedure; and the Resolution dated October 29, 2002,[2] denying the motion for reconsideration.

The undisputed facts are as follows.

Respondent Associated Anglo American Tobacco Corporation (ANGLO) and the Union entered into a Collective Bargaining Agreement (CBA) on September 12, 1996. On April 2, 1998, the parties signed a Memorandum of Agreement providing for a moratorium on the negotiations on the forthcoming CBA between them. In December 1998, ANGLO and the Union convened to discuss wage increases for the year 1999. Due to a breakdown in the negotiations, the Union filed a Notice of Strike with the National Conciliation and Mediation Board on February 8, 1999.

On March 7, 1999 the Union staged a strike. Thereafter, on April 12, 1999, ANGLO announced the closure or cessation of its business operations and applied for a Notice of Closure with the Department of Labor and Employment due to serious business losses.

On April 22, 1999, ANGLO and the Union executed another Memorandum of Agreement providing for the referral of their dispute to an accredited Voluntary Arbitrator (VA). On May 3, 1999, the VA issued a decision finding the closure legal and awarding financial assistance to the workers and on May 5, 1999, the parties executed before the VA a document entitled "Mechanics of Releasing of Goods/Manner of Payments" to implement compliance with the decision of the VA. Immediately thereafter, the strike was lifted and except for 44 members of the Union who are individual petitioners in the present petition, the other striking employees executed Affidavits of Quitclaim and Release in favor of ANGLO.

On May 13, 1999, the aforementioned 44 members of the Union questioned the award of the VA before the CA, docketed as CA-G.R. SP No. 52734, alleging grave abuse of discretion on the part of the VA. Said petition was dismissed by the CA.

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[2] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eubulo G. Verzola and Renato C. Dacudao, concurring; *rollo*, p. 34.

The CA decision was then elevated to this Court *via* a petition for review, docketed as G.R. No. 144574, but in a Resolution dated November 20, 2000, said petition was dismissed. The motion for reconsideration of said Resolution was denied.

Even while said case questioning the award of the VA was pending before the CA, herein individual petitioners, who are the very same persons who filed the case with the CA, also filed several complaints with the National Labor Relations Commission (NLRC) Labor Arbiter. Said complaints were then consolidated and on May 9, 2000, the Labor Arbiter issued a Decision dismissing the complaints for lack of merit. Petitioners appealed to the NLRC but said appellate body affirmed the dismissal of petitioners' complaints. Their motion for reconsideration before the NLRC was likewise denied.

On April 9, 2002, petitioners filed their petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 69807. The CA then issued on June 5, 2002 the herein assailed Resolution dismissing the petition on the ground that only one of the petitioners executed the Verification/Certification of Non-Forum Shopping without submitting proof that she is authorized to represent the other petitioners. Petitioners moved for reconsideration of the dismissal but the same was denied.

Hence, the present petition for *certiorari* on the following grounds:

I.

PUBLIC RESPONDENT COURT OF APPEALS (THIRD DIVISION) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING THE PETITION FOR *CERTIORARI* SOLELY ON THE GROUND THAT THE PETITION WAS SIGNED BY FLAVIANA BERLIN WHO IS AMONG THE REAL AND PRINCIPAL PARTIES IN INTEREST IN THE INSTANT CASE.

II.

PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE PETITION FOR *CERTIORARI* AND MAY HAVE OVERLOOKED THE SETTLED

DOCTRINE ON THE RIGID APPLICATION OF TECHNICAL RULES.[3]

The petition is without merit.

It is true that **under justifiable circumstances,** the Court has relaxed the rule requiring all petitioners to affix their signature to the certification on non-forum shopping. Recently, the Court has deemed it proper to relax said rule by considering the signature of only one among numerous petitioners as substantial compliance in cases where all petitioners share a common interest and invoke a common cause of action or defense.[4] In the present case, petitioners do share a common cause of action, that of illegal dismissal.

However, a petition for *certiorari* under Rule 65 of the Rules of Court may be resorted to **only** if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[5]

In *Macawiag v. Balindog*,[6] the Court emphasized this principle, thus:

> The well-settled rule is that *certiorari* is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive. Consequently, when petitioner filed her petition in this Court, the decision of the Shari'a District Court was already final and executory.

In view of the foregoing, as much as we want to review the merits of the petition, we are constrained by the procedural lapse which

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[3] *Rollo*, p. 14.

[4] *Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007, 519 SCRA 327, 344-345; *Cua v. Vargas*, G.R. No. 156536, October 31, 2006, 506 SCRA 374, 390; *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 411-412.

[5] 1997 RULES OF CIVIL PROCEDURE, Rule 65, Section 1.

[6] G.R. No. 159210, September 20, 2006, 502 SCRA 454.

this Court cannot ignore. When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality. Otherwise, there would be no end to litigation and would set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. x x x

Admittedly, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, this Court has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, but not when the petition is filed well beyond the reglementary period for filing a petition for review and without offering any reason therefor.

The Court ruled in *Sebastian v. Morales* that:

> Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.
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> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.

The fact that petitioner used the Rule 65 modality as a substitute for a lost appeal is made plain by the following:

First. While the petition was filed within the 60-day period for filing a petition for *certiorari*, it was nevertheless filed beyond the 15-day period for filing a petition for review. x x x[7]

In the present case, petitioners could have appealed to this Court by filing a petition for review on *certiorari* under Rule 45. No such petition was filed within the reglementary period, thus, the CA Decision became final and executory.

Neither did petitioners convince the Court of the substantial merits of the action or complaint filed with the NLRC. The Labor Arbiter dismissed their complaint on the ground of *litis pendentia* and/or forum shopping. This finding was affirmed *in toto* by the NLRC. In their petition and Memorandum submitted to this Court, petitioners never discussed why they believe both the Labor Arbiter and the NLRC erred in finding them guilty of forum shopping.

Clearly, just like in *Macawiag*, this petition is merely a substitute for a lost appeal and should be dismissed.

WHEREFORE, the petition is *DISMISSED* for lack of merit.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[7] *Id.* at 465-467.

THIRD DIVISION

[G.R. Nos. 156851-55. February 18, 2008]

HEIDE M. ESTANDARTE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS*; CERTIORARI;* INSTANT PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 TREATED AS A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT SINCE THE PRIMORDIAL ISSUE TO BE RESOLVED IS WHETHER THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR REINVESTIGATION. — Considering that herein assailed Orders are obviously interlocutory orders, the proper recourse of petitioner should have been by way of a petition for *certiorari* as prescribed in Section 1, Rule 41 of the Rules of Court, which specifically allows the aggrieved party to file a petition for *certiorari* under Rule 65. The herein petition for review on *certiorari* assails the jurisdiction of the RTC in issuing the Orders in question denying petitioner's Motion for Reinvestigation, on the ground that the five Informations filed against the petitioner contained charges beyond the Bill of Particulars filed by the private complainants, thereby depriving her of due process. The Court has treated a petition for review on *certiorari* under Rule 45 as a petition for *certiorari* under Rule 65 of the Rules of Court in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction. Moreover, in the exercise of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits based on records and evidence of the parties. Proceeding from the time-honored principle that rules of procedure should promote, not defeat substantial justice, the Court may opt to apply the Rules liberally to resolve the substantial issues raised by the parties. Accordingly, the Court shall treat the instant petition as a

petition for *certiorari* under Rule 65 of the Rules of Court since the primordial issue to be resolved is whether the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion for Reinvestigation.

2. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; ACT OF THE PROSECUTOR IN GRANTING PETITIONER'S MOTION FOR BILL OF PARTICULARS IS AN ACT CONTRARY TO THE EXPRESS MANDATE OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN (A.O. No. 7). — Petitioner insists that the Ombudsman-Visayas should have limited the charges filed against her to the crimes mentioned in the Bill of Particulars, and that the filing of the Informations charging her with crimes different from those specified in the Bill of Particulars violates her right to due process. The Office of the Solicitor General (OSG) counters that a bill of particulars is not allowed by Administrative Order No. 7, entitled *Rules of Procedure in the Office of the Ombudsman* (A.O. No. 7); and that therefore the Ombudsman cannot be bound by the Bill of Particulars submitted by private complainants. The Court agrees with the OSG. Clearly, the act of the prosecutor in granting the petitioner's Motion for Bill of Particulars is an act contrary to the express mandate of A.O. No. 7, to wit: Section 4. *Procedure* — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions: x x x d) No motion to dismiss shall be allowed except for lack of jurisdiction. **Neither may a motion for a bill of particulars be entertained**. If the respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

3. ID.; ID.; ID.; THE OMBUDSMAN-VISAYAS IS NOT BOUND BY THE ERRONEOUS ACT OF THE CITY PROSECUTOR IN GRANTING PETITIONER'S MOTION FOR BILL OF PARTICULARS; LAWS AND JURISPRUDENCE GRANT THE OFFICE OF THE OMBUDSMAN THE AUTHORITY

TO REVERSE OR NULLIFY THE ACTS OF THE PROSECUTOR PURSUANT TO ITS POWER OF CONTROL AND SUPERVISION OVER DEPUTIZED PROSECUTORS. — The Court finds the argument of petitioner that when the City Prosecutor was deputized by the Ombudsman-Visayas to conduct the preliminary investigation, any action taken therein is, in effect, an action of the Ombudsman, who is bound by the act of the City Prosecutor in granting the Motion for Bill of Particulars, and is not tenable. Section 31 of R.A. No. 6770 or The Ombudsman Act of 1989 expressly provides that those designated or deputized to assist the Ombudsman shall be under his supervision and control. Indubitably, when the City Prosecutor is deputized by the Office of the Ombudsman, he comes under the "supervision and control" of the Ombudsman which means that he is subject to the power of the Ombudsman to direct, review, approve, **reverse or modify** the prosecutor's decision. Consequently, in the present case, petitioner has no valid basis for insisting that the Ombudsman-Visayas must be bound by the erroneous act of the City Prosecutor in granting petitioner's Motion for Bill of Particulars. Laws and jurisprudence grant the Office of the Ombudsman the authority to reverse or nullify the acts of the prosecutor pursuant to its power of control and supervision over deputized prosecutors. Hence, it was within the prerogative of the Ombudsman-Visayas not to consider the Bill of Particulars submitted by the private complainants.

4. ID.; BILL OF RIGHTS; RIGHT TO DUE PROCESS; WHILE THERE IS NO RULE THAT THE INITIAL COMPLAINT FILED AGAINST AN ACCUSED WITH THE PROSECUTOR'S OFFICE SHOULD SPECIFICALLY STATE THE PARTICULAR LAW UNDER WHICH HE IS BEING CHARGED, IT IS A BASIC ELEMENTARY RULE THAT THE COMPLAINT SHOULD SPECIFICALLY ALLEGE THE CRIMINAL ACTS COMPLAINED OF, SO AS TO ENABLE THE ACCUSED TO PREPARE HIS ANSWER OR COUNTER-AFFIDAVIT ACCURATELY AND INTELLIGENTLY. — While the Bill of Particulars is not allowed under the Rules of Procedure of the Office of the Ombudsman and therefore should not be the basis for determining what specific criminal charges should be filed against herein petitioner, it behooves the Ombudsman to accord the petitioner her basic rights to due process in the conduct

of the preliminary investigation. In a preliminary investigation, Section 3, Rule 112 of the Rules of Court guarantees the petitioner's basic due process rights, **such as the right to be furnished a copy of the complaint, the affidavits, and other supporting documents**, and the right to submit counter-affidavits and other supporting documents in her defense. In the pleadings submitted before this Court, petitioner complained that the subpoenas served on her did not state the law allegedly violated by her. In the Motion for Bill of Particulars she filed before the City Prosecutor, she declared that she was served with **"subpoena together with the documents attached therein."** However, after a thorough examination of the records, the Court does not find the subpoenas and the alleged documents served on her. Absent the subpoenas and the documents attached to the subpoenas, how could it be intelligently determined whether she was fully apprised of the acts complained of and imputed to her; whether she was given the opportunity to submit an appropriate counter-affidavit to the charges; and whether the charges in the five Informations filed against petitioner were based on the same acts complained of and stated in the subpoena and the documents attached thereto? While there is no rule that the initial complaint filed against an accused with the prosecutor's office should specifically state the particular law under which he is being charged, it is a basic elementary rule that the complaint should specifically allege the criminal acts complained of, so as to enable the accused to prepare his answer or counter-affidavit accurately and intelligently.

5. ID.; ID.; ID.; A VALID AND JUST DETERMINATION OF WHETHER THERE IS PROBABLE CAUSE ON THE PART OF THE OMBUDSMAN TO BRING THE CASES TO COURT AGAINST PETITIONER WOULD ENSUE ONLY WHEN THE PETITIONER HAS BEEN FULLY ACCORDED DUE PROCESS IN THE CONDUCT OF THE PRELIMINARY INVESTIGATION. — In resolving the question whether petitioner was denied due process, the RTC or this Court cannot rely on the disputable presumption that official duties have been regularly performed. The RTC should have required the petitioner to submit the subpoenas and the attached documents served on her to enable it to examine the same and resolve whether the petitioner's right to be informed was violated. It was only upon ascertaining this fact that the RTC could have validly determined whether petitioner was

denied due process. It must be stressed that the primordial issue in the present petition is not whether the Ombudsman-Visayas had correctly found a probable cause to justify the filing of the five Informations against herein petitioner, but whether she was not accorded due process in the conduct of the preliminary investigation as to entitle her to a reinvestigation. A valid and just determination of whether there is a probable cause on the part of the Ombudsman to bring the cases to court against petitioner would ensue only when the petitioner has been fully accorded due process in the conduct of the preliminary investigation. A preliminary investigation is a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime, with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. In order to satisfy the due process clause, it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantee of freedom and fair play which are birthrights of all who live in our country.

APPEARANCES OF COUNSEL

Allan L. Zamora for petitioner.
The Solicitor General for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court are Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, filed by Heide[1] M. Estandarte

[1] Spelled as "Heidi" in the Information and other pleadings.

(petitioner) which seek to reverse and set aside the Order[2] dated September 24, 2002 of the Regional Trial Court (RTC) of Bago City, Branch 62 denying the petitioner's Motion for Reinvestigation and the Order[3] dated December 20, 2002 of the same court denying petitioner's Motion for Reconsideration issued in consolidated Criminal Case Nos. 1918-1922.

The records disclose the following antecedent facts:

Petitioner was the school principal of the Ramon Torres National High School (RTNHS) in Bago City, Negros Occidental.[4]

Sometime in 1998, a group of concerned RTNHS teachers, composed of the Faculty and Personnel Club Officers and department heads (private complainants), sent an undated letter to the Schools Division of Bago City (Schools Division)[5] attaching a list of 15 irregularities allegedly committed by the petitioner, which the private complainants requested to be investigated.[6]

Two complaints were eventually filed by private complainants against petitioner with the Office of the Ombudsman-Visayas (Ombudsman-Visayas) docketed as OMB-VIS-Crim-99-1094 and OMB-VIS-Crim-2000-1127.

The Ombudsman-Visayas forwarded the complaint docketed as OMB-VIS-Crim-99-1094 to the Office of the City Prosecutor of Bago City (City Prosecutor) for preliminary investigation, pursuant to Section 31 of Republic Act (R.A.) No. 6770, otherwise known as the Ombudsman Act of 1989.[7] The City Prosecutor served the petitioner with a subpoena on August 28, 2000 and another on August 30, 2000, requiring her to submit her counter-affidavit.[8]

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[2] Penned by Judge Henry J. Trocino, *rollo*, pp. 21-23.

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

[4] *Rollo,* p. 6.

[5] *Id.* at 34-36.

[6] *Id.* at 36.

[7] Records (Criminal Case No. 1918), p. 72.

[8] *Rollo,* p. 8.

On September 6, 2000, instead of filing a counter-affidavit, petitioner filed before the City Prosecutor a Motion for Bill of Particulars with Motion for Extension of Time to File Counter-Affidavit.[9] In the Motion for Bill of Particulars, petitioner alleged that there were no specific criminal charges that were stated in the subpoenas. Thus, petitioner insisted that she cannot intelligently prepare her counter-affidavit unless the criminal charges and the laws she violated are specified.[10]

On March 10, 2000, the City Prosecutor issued an Order[11] attaching the private complainants' Bill of Particulars,[12] pertinent portions of which read:

1. That complainants are charging respondent for violation of Sec. 68 and 69 of PD 1445[13] in connection with the above-entitled case;

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[9] *Id*. at 39-40.

[10] *Rollo*, p. 40.

[11] *Id*. at 43.

[12] *Id*. at 41-A.

[13] Section 68 and Section 69 of Presidential Decree 1445 or the "Government Auditing Code of the Philippines" provide:

Section 68. *Issuance of Official receipt*.— (1) No payment of any nature shall be received by a collection officer without immediately issuing an official receipt in acknowledgment thereof. The receipt may be in the form of postage, internal revenue or documentary stamps and the like, or officially numbered receipts, subject to proper custody, accountability, and audit.

(2) Where mechanical devices are used to acknowledge cash receipts, the Commission may approve, upon request, exemption from the use of accountable forms.

Section 69. *Deposit of moneys in the treasury*.— (1) Public officers authorized to receive and collect moneys arising from taxes, revenues, or receipts of any kind shall remit or deposit intact the full amounts so received and collected by them to the treasury of the agency concerned and credited to the [particular accounts to which the said money belong. The amount of the collections ultimately payable to other agencies of the government shall thereafter be remitted to the respective treasuries of these agencies, under regulations which the Commission and the Department (Ministry) of Finance shall prescribe.

(2) When exigencies of the service so require, under such rules and regulations as the Commission and the Department (Ministry) of Finance may prescribe.

2. That to support their complaint, private complainants adopt the investigation report of the provincial [sic] Auditor on [sic] complaint No. 23 and 25 which states:

Complaint 23 & 25

The principal Ms. Estandarte accepted cash and in kind donations without being properly channeled and accounted first by the property custodian and the cash without first deposited in the Trust Fund.

x x x x x x x x x

and directing the petitioner to file her counter-affidavit.[14] Petitioner filed her counter-affidavit limiting herself only to the charges specified in the Bill of Particulars.[15]

Thereafter, the City Prosecutor referred the case back to the Ombudsman-Visayas. The latter found sufficient grounds to hold petitioner liable for five counts of violation of Section 3(e)[16] of R.A. No. 3019, as amended, or the Anti-Graft and

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Postmasters, may be authorized to use their collections to pay money orders, telegraphic transfers and withdrawals from the proper depository bank whenever their cash advance funds for the purpose have been exhausted. The amount of collections so used shall be restored upon receipt by the postmaster of the replenishment of his cash advance.

(3) Pending remittance to the proper treasury, collecting officers may temporarily deposit collections received by them with any treasury, subject to regulations of the Commission.

(4) The respective treasuries of these agencies shall in turn deposit with the proper government depository the full amount of the collections not later than the following banking day."

[14] *Rollo*, p. 41.

[15] *Id.* at 9.

[16] Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act provides: "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:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through

Corrupt Practices Act, and filed before the RTC the corresponding Informations,[17] all dated October 12, 2001, with the following charges:

1. In Criminal Case No. 1918, for receiving cash donations from private individuals and establishments in the total amount ₱163,400.00;[18]

2. In Criminal Case No. 1919, for collecting contributions or allowing the collection of contributions in the amount of ₱10.00 from the enrollees of the school without authority of law;[19]

3. In Criminal Case No. 1920, for purchasing guns using the students' Trust Fund and registering the same in her name, depriving the Security Guard of the school of the use of said guns;[20]

4. In Criminal Case No. 1921, for double charging of the expenses of ₱1,500.00 incurred for the video coverage of the coronation night;[21]

5. In Criminal Case No. 1922, for double charging of the expenses amounting to ₱45,000.00 incurred in the repairs of the Home Economics Building of the school.[22]

The criminal cases were consolidated.

On May 21, 2002, petitioner filed a Motion for Reinvestigation[23] before the RTC on the ground that she cannot allegedly be

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manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. x x x."

[17] Criminal Case Nos. 1918-1922, all entitled "*People of the Philippines v. Heidi M. Estandarte.*"

[18] Records (Crim. Case No. 1918), pp. 1-3.

[19] Records (Crim. Case No. 1919), pp. 1-3.

[20] Records (Crim. Case No. 1920), pp. 1-3.

[21] Records (Crim. Case No. 1921), pp. 1-3.

[22] Records (Crim. Case No. 1922), pp. 1-3.

[23] Records (Crim. Case No. 1918), pp. 33-37.

charged with violation of Sections 68 and 69 of Presidential Decree (P.D.) No. 1445 since she was not a collecting officer. She also asserts that she cannot be charged under Section 3(e) of R.A. No. 3019, as the acts which she was charged with, did not constitute "manifest partiality, evident bad faith or inexcusable negligence."[24]

The RTC, in its assailed Order[25] dated September 24, 2002, ruled against the petitioner.[26] In denying the Motion for Reinvestigation, the RTC held that the petitioner's claim that her acts for which she is charged do not constitute "manifest partiality, evident bad faith or grossly inexcusable negligence" and is evidentiary in nature, and the same can only be appreciated after a full-blown trial.[27]

Feeling aggrieved, the petitioner filed a Motion for Reconsideration[28] of the September 24, 2002 Order. Petitioner maintains that when the five Informations for the violation of Section 3(e) of R.A. No. 3019 were filed by the Ombudsman-Visayas, her right to due process was violated; and that the Ombudsman-Visayas in effect went beyond the Bill of Particulars filed by the private complainants.[29]

In the other assailed Order[30] dated December 20, 2002, the RTC denied the Motion for Reconsideration.[31]

Hence, herein petition.

Petitioner claims that the RTC erred when it overlooked the following "formulations," *viz*:

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[24] *Id*.

[25] *Rollo,* pp. 21-23.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 24-28.

[29] *Id*.

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

[31] *Id*.

(1) THE HONORABLE OFFICE OF THE OMBUDSMAN (VISAYAS) CANNOT NOW QUESTION THE "BILL OF PARTICULARS" FILED BY COUNSEL FOR COMPLAINANTS;

(2) WHEN THE HONORABLE OFFICE OF THE OMBUDSMAN WENT BEYOND THE "BILL OF PARTICULARS" FILED BY THE COMPLAINANTS THROUGH THEIR COUNSEL, SHE WAS EFFECTIVELY DENIED OF HER RIGHT TO DUE PROCESS.[32]

The petition is partly meritorious.

The Court shall first discuss the procedural aspect of the case.

The herein assailed RTC Order dated September 24, 2002 denied petitioner's Motion for Reinvestigation, and the other assailed RTC Order dated December 20, 2002 denied her Motion for Reconsideration.

From the RTC, petitioner went straight to this Court *via* a petition for review on *certiorari* under Rule 45 apparently on the basis of Section 2(c), Rule 41[33] of the Rules of Court, which provides that in all cases where only questions of law are raised, the appeal **from a decision or final order** of the RTC shall be to the Supreme Court by a petition for review on *certiorari* in accordance with Rule 45.[34]

However, considering that herein assailed Orders are obviously interlocutory orders, the proper recourse of petitioner should have been by way of a petition for *certiorari* as prescribed in Section 1, Rule 41 of the Rules of Court, which specifically allows the aggrieved party to file a petition for *certiorari* under Rule 65.[35]

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[32] *Rollo*, p. 11.

[33] Sec. 2. *Modes of Appeal.*— x x x (c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

[34] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.,* G.R. No. 161882, July 8, 2005, 463 SCRA 222, 232.

[35] As amended by A.M. No. 07-7-12-SC, effective December 27, 2007.

The herein petition for review on *certiorari* assails the jurisdiction of the RTC in issuing the Orders in question denying petitioner's Motion for Reinvestigation, on the ground that the five Informations filed against the petitioner contained charges beyond the Bill of Particulars filed by the private complainants, thereby depriving her of due process.

The Court has treated a petition for review on *certiorari* under Rule 45 as a petition for *certiorari* under Rule 65 of the Rules of Court in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction.[36]

Moreover, in the exercise of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits based on records and evidence of the parties.[37] Proceeding from the time-honored principle that rules of procedure should promote, not defeat substantial justice, the Court may opt to apply the Rules liberally to resolve the substantial issues raised by the parties.[38]

Accordingly, the Court shall treat the instant petition as a petition for *certiorari* under Rule 65 of the Rules of Court since the primordial issue to be resolved is whether the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion for Reinvestigation.

Thus, the Court will now proceed to determine the merits of the present petition.

On the first assigned error, petitioner insists that the Ombudsman-Visayas should have limited the charges filed against her to the crimes mentioned in the Bill of Particulars, and that

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[36] See *Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto,* 434 Phil. 618, 624 (2002); *Fortich v. Corona,* 352 Phil. 461, 477 (1998).

[37] *Security Bank Corporation v. Indiana Aerospace University,* G.R. No. 146197, June 27, 2005, 461 SCRA 260, 268.

[38] *Id.* at 268-269.

the filing of the Informations charging her with crimes different from those specified in the Bill of Particulars violates her right to due process.

The Office of the Solicitor General (OSG) counters that a bill of particulars is not allowed by Administrative Order No. 7, entitled *Rules of Procedure in the Office of the Ombudsman*[39] (A.O. No. 7); and that therefore the Ombudsman cannot be bound by the Bill of Particulars submitted by private complainants.

The Court agrees with the OSG. Clearly, the act of the prosecutor in granting the petitioner's Motion for Bill of Particulars is an act contrary to the express mandate of A.O. No. 7, to wit:

> Section 4. *Procedure* — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
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> x x x x x x x x x
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> d) No motion to dismiss shall be allowed except for lack of jurisdiction. **Neither may a motion for a bill of particulars be entertained.** If the respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

The Court finds the argument of petitioner that when the City Prosecutor was deputized by the Ombudsman-Visayas to conduct the preliminary investigation, any action taken therein is, in effect, an action of the Ombudsman, who is bound by the act of the City Prosecutor in granting the Motion for Bill of Particulars, and is not tenable.

Section 31 of R.A. No. 6770 or The Ombudsman Act of 1989 expressly provides that those designated or deputized to assist the Ombudsman shall be under his supervision and control. Indubitably, when the City Prosecutor is deputized by the Office of the Ombudsman, he comes under the "supervision and control"

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[39] Effective May 1, 1990.

of the Ombudsman which means that he is subject to the power of the Ombudsman to direct, review, approve, **reverse or modify** the prosecutor's decision.[40]

Consequently, in the present case, petitioner has no valid basis for insisting that the Ombudsman-Visayas must be bound by the erroneous act of the City Prosecutor in granting petitioner's Motion for Bill of Particulars. Laws and jurisprudence grant the Office of the Ombudsman the authority to reverse or nullify the acts of the prosecutor pursuant to its power of control and supervision over deputized prosecutors. Hence, it was within the prerogative of the Ombudsman-Visayas not to consider the Bill of Particulars submitted by the private complainants.

This brings the Court to the second assigned error.

Petitioner claims that her right to due process was violated when the Ombudsman-Visayas filed the Informations charging her with violations of R.A. No. 3019, which went beyond the charges specified in the Bill of Particulars.[41] Petitioner further argues that since there were no criminal charges stated in the subpoenas served on her on August 28, 2000 and August 30, 2000, she was not properly informed of the nature of the crime which she was supposed to answer in her counter-affidavit.[42]

While the Bill of Particulars is not allowed under the Rules of Procedure of the Office of the Ombudsman and therefore should not be the basis for determining what specific criminal charges should be filed against herein petitioner, it behooves the Ombudsman to accord the petitioner her basic rights to due process in the conduct of the preliminary investigation.

In a preliminary investigation, Section 3, Rule 112 of the Rules of Court guarantees the petitioner's basic due process rights, **such as the right to be furnished a copy of the complaint,**

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[40] *Lastimosa v. Vasquez,* 313 Phil. 358, 372-373 (1995); *Office of the Ombudsman v. Valera,* G.R. No. 164250, September 30, 2005, 471 SCRA 715, 743-744.

[41] *Rollo,* p. 16.

[42] *Rollo,* p. 92.

the affidavits, and other supporting documents, and the right to submit counter-affidavits and other supporting documents in her defense,[43] to wit:

Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

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(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x x x x x x x

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Likewise, Section 4 of A.O. No. 7 provides:

Section 4. *Procedure*. — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof

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[43] *Secretary of Justice v. Lantion,* 379 Phil. 165, 210 (2000).

of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If the respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

h) No information may be filed and no complaint may be dismissed without written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases. (Emphasis supplied)

In the pleadings submitted before this Court, petitioner complained that the subpoenas served on her did not state the law allegedly violated by her.[44]

In the Motion for Bill of Particulars she filed before the City Prosecutor, she declared that she was served with **"subpoena together with the documents attached therein**."[45]

However, after a thorough examination of the records, the Court does not find the subpoenas and the alleged documents served on her. Absent the subpoenas and the documents attached to the subpoenas, how could it be intelligently determined whether she was fully apprised of the acts complained of and imputed to her; whether she was given the opportunity to submit an appropriate counter-affidavit to the charges; and whether the charges in the five Informations filed against petitioner were based on the same acts complained of and stated in the subpoena and the documents attached thereto?

While there is no rule that the initial complaint filed against an accused with the prosecutor's office should specifically state the particular law under which he is being charged, it is a basic elementary rule that the complaint should specifically allege the criminal acts complained of, so as to enable the accused to prepare his answer or counter-affidavit accurately and intelligently.

The determination of the issue whether the criminal charges were indeed alleged or specified in the subpoenas and in the documents attached thereto, is a factual issue and therefore outside the province of this Court. It is a well-settled rule that the Supreme Court is not the proper venue in which to consider a factual issue, as it is not a trier of facts.[46]

In resolving the question whether petitioner was denied due process, the RTC or this Court cannot rely on the disputable

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[44] Petition for Review on *Certiorari*, *rollo*, p. 5; Reply to Comment, *id.* at 92; Memorandum of the Petitioner, *id.* at 107.

[45] *Id.* at 39.

[46] *Development Bank of the Philippines v. Perez*, G.R. No. 148541, November 11, 2004, 442 SCRA 238, 248.

presumption that official duties have been regularly performed. The RTC should have required the petitioner to submit the subpoenas and the attached documents served on her to enable it to examine the same and resolve whether the petitioner's right to be informed was violated. It was only upon ascertaining this fact that the RTC could have validly determined whether petitioner was denied due process.

It must be stressed that the primordial issue in the present petition is not whether the Ombudsman-Visayas had correctly found a probable cause to justify the filing of the five Informations against herein petitioner, but whether she was not accorded due process in the conduct of the preliminary investigation as to entitle her to a reinvestigation. A valid and just determination of whether there is a probable cause on the part of the Ombudsman to bring the cases to court against petitioner would ensue only when the petitioner has been fully accorded due process in the conduct of the preliminary investigation.

A preliminary investigation is a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer.[47] Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime, with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case.[48] In order to satisfy the due process clause, it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity.[49] A preliminary

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[47] *Cruz, Jr. v. People of the Philippines,* G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449.

[48] *Olivas v. Office of the Ombudsman,* G.R. No. 102420, December 20, 1994, 239 SCRA 283, 295.

[49] *Ortiz v. Palaypayon,* A.M. No. MTJ-93-823, July 25, 1994, 234 SCRA 391, 396.

investigation serves not only the purposes of the State. More important, it is a part of the guarantee of freedom and fair play which are birthrights of all who live in our country.[50]

WHEREFORE, the petition is *PARTIALLY GRANTED.* The assailed Orders dated September 24, 2002 and December 20, 2002 of the Regional Trial Court of Bago City, Branch 62 are *SET ASIDE*. The case is remanded to the trial court for determination whether petitioner was denied due process in the conduct of the preliminary investigation.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 159490. February 18, 2008]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE AND BINDING ON THE COURT WITHOUT NEED OF PASSING UPON THE SUPPORTING EVIDENCE RELIED UPON. — We reiterate the prevailing rule that the findings of fact of the CA are generally conclusive and binding and the Court need not pass upon the supporting evidence. For, it is

[50] *Id.* at 396-397.

not this Court's function to analyze or weigh evidence all over again. Stated a bit differently, the CA's findings of fact affirming those of the trial court will not be disturbed by the Court. This is as it should be for the trial court, as trier of facts, is best equipped to make the assessment of issues raised and evidence adduced before it. Therefore, its factual findings are generally not disturbed on appeal unless it is perceived to have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision involved. In the instant case, we find no cogent reason to depart from this general principle.

2. ID.; EVIDENCE; OFFER OF EVIDENCE; NO EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED SHALL BE CONSIDERED; WHERE THE PERTINENT INVOICES OR RECEIPT PURPORTEDLY EVIDENCING THE VALUE ADDED TAX (VAT) PAID BY PETITIONER WERE NOT SUBMITTED, THE COURTS *A QUO* EVIDENTLY COULD NOT DETERMINE THE VERACITY OF THE INPUT VAT PAID AND THE VERACITY OF THE EXPORT SALES INDICATED IN PETITIONER'S AMENDED VAT RETURN. — The Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts *a quo* evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts *a quo* likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return. It must be noted that the most competent evidence must be adduced and presented to prove the allegations in a complaint, petition, or protest before a judicial court. And where the best evidence cannot be submitted, secondary evidence may be presented. In the instant case, the pertinent documents which are the best pieces of evidence were not presented.

3. TAXATION; VALUE ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; THE SUMMARY PRESENTED BY PETITIONER DOES NOT REPLACE THE PERTINENT INVOICES, RECEIPTS, AND EXPORT SALES DOCUMENTS AS COMPETENT EVIDENCE TO PROVE THE FACT OF REFUNDABLE OR CREDITABLE INPUT VAT. — The summary presented by Atlas does not replace the pertinent invoices, receipts, and export sales documents as competent evidence to prove the fact of refundable or creditable input VAT. Indeed, the summary presented with the certification by an independent Certified Public Accountant (CPA) and the testimony of Atlas' Accounting and Finance Manager are merely corroborative of the actual input VAT it paid and the actual export sales. Otherwise, the pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate Atlas' claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA and the testimony of Atlas' employee on the export sales. And when these pertinent documents are not presented, these could not be corroborated as is true in the instant case.

4. ID.; ID.; ID.; PETITIONER FAILED TO MEET THE BURDEN OF PROOF REQUIRED IN ORDER TO ESTABLISH THE FACTUAL BASIS OF ITS CLAIM FOR A TAX CREDIT OR REFUND; TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS AND ARE TO BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER. — Atlas' mere allegations of the figures in its amended VAT return for the first quarter of 1993 as well as in its petition before the CTA are not sufficient proof of the amount of its refund entitlement. They do not even constitute evidence adverse to CIR against whom they are being presented. While Atlas indeed submitted several documents, still, the CTA could not ascertain from them the veracity of the figures as the documents presented by Atlas were not sufficient to prove its action for tax credit or refund. Atlas has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Neither can we ascertain the veracity of Atlas' alleged input VAT taxes which are refundable nor the alleged actual export sales indicated in the amended VAT return. Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without

proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions," and are to be construed *strictissimi juris* against the taxpayer.

5. ID.; ID.; ID.; A REVENUE REGULATION IS BINDING ON THE COURTS AS LONG AS THE PROCEDURE FIXED FOR ITS PROMULGATION IS FOLLOWED; REVENUE REGULATIONS OR ADMINISTRATIVE ISSUANCES HAVE THE FORCE OF LAW AND ARE ENTITLED TO GREAT WEIGHT. — It is thus academic whether compliance with the documentary requirements of RR 3-88 is necessary. Suffice it to say that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. It has not been disputed that RR 3-88 has been duly promulgated pursuant to the rule-making power of the Secretary of Finance upon the recommendation of the CIR. As aptly held by the courts *a quo*, citing *Eslao,* these RRs or administrative issuances have the force of law and are entitled to great weight.

6. ID.; ID.; ID.; NO DENIAL OF DUE PROCESS IN DENYING PETITIONER'S MOTION FOR NEW TRIAL; PETITIONER IS GUILTY OF INEXCUSABLE NEGLIGENCE IN THE PROSECUTION OF ITS CASE AND IT GOES AGAINST THE ORDERLY ADMINISTRATION OF JUSTICE TO ALLOW A PARTY TO SUBMIT FORGOTTEN EVIDENCE WHICH IT COULD HAVE OFFERED WITH THE EXERCISE OF ORDINARY DILIGENCE. — Atlas attempted or showed willingness to submit the required documents only after the CTA rendered its decision. Aside from assailing the applicability of RR 3-88, Atlas argued in its motion for reconsideration before the CTA that, on the alternative, the case be re-opened to allow it to present the required documents as it followed in good faith the requirement under Sec. 106 of the 1977 Tax Code, and alleged that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied requiring Atlas to submit the documents needed. Obviously, Atlas' reliance on Sec. 106 of the 1977 Tax Code is unacceptable for such does not constitute excusable negligence. In short, Atlas is guilty of inexcusable negligence in the prosecution of its case. The courts *a quo* relied on the procedural deficiency of non-compliance with Sec. 2, Rule 37 of the Rules of Court in denying a new trial. In doing so, the courts *a quo* recognized Atlas'

motion for reconsideration also as a motion for new trial, which was alternatively prayed for by Atlas. Be that as it may, even if Atlas has complied with the affidavits-of-merits requirement, its prayer for a new trial would still not prosper. *First*, Atlas is guilty of inexcusable negligence in the prosecution of its case. It is duty-bound to ensure that all proofs required under the rules are duly presented. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim, the CTA is bound by its rules and suppletorily by the Rules of Court. It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required. *Second*, forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. *Third*, and most importantly, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered. *In fine*, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing the May 16, 2003 Decision[1] of the Court of Appeals

[1] *Rollo*, pp. 43-51. Penned by Presiding Justice Cancio C. Garcia (Chairperson, now a retired member of this Court) and concurred in by Associate Justices Eloy R. Bello, Jr. and Mariano C. Del Castillo.

(CA) in CA-G.R. SP No. 46494, which affirmed the October 13, 1997 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5205 entitled *Atlas Consolidated Mining and Development Corporation* (*Atlas*) *v. The Commissioner of Internal Revenue* (*CIR*), involving petitioner Atlas' application for issuance of tax credit certificate or refund of value-added tax (VAT) payments in accordance with Section 106(b) of the Tax Code on zero-rated VAT payers. Also assailed is the August 11, 2003 Resolution[3] of the CA denying Atlas' motion for reconsideration.

The Facts

Atlas is a corporation duly organized and existing under Philippine laws engaged in the production of copper concentrates for export. It registered as a VAT entity and was issued VAT Registration Certificate No. 32-0-004622 effective August 15, 1990.

For the first quarter of 1993, Atlas' export sales amounted to PhP 642,685,032.24. Its proceeds were received in acceptable foreign currency and inwardly remitted in accordance with Central Bank regulations. For the same period, Atlas paid PhP7,907,662.53 for input taxes, as follows:

Local	PhP 7,117,222.53
Importation	790,440.00
Total	PhP 7,907,662.53

Thereafter, Atlas filed a VAT return for the first quarter of 1993 with the Bureau of Internal Revenue (BIR) on April 20, 1993, and also filed an amended VAT return.

On September 20, 1993, Atlas applied with the BIR for the issuance of a tax credit certificate or refund under Section 106(b) of the Tax Code. The certificate would represent the VAT it paid for the first quarter of 1993 in the amount of PhP 7,907,662.53, which corresponded to the input taxes not applied against any output VAT.

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[2] *Id*. at 63-69. Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Ramon O. De Veyra and Amancio Q. Saga.

[3] *Id*. at 54.

Atlas then filed a petition for review with the CTA on February 22, 1995 to prevent the running of the prescriptive period under Sec. 230 of the Tax Code.

The Ruling of the Court of Tax Appeals

The petition for review before the CTA was docketed as CTA Case No. 5205. On October 13, 1997, the CTA rendered a Decision denying Atlas' claim for tax credit or refund. The *fallo* reads:

> WHEREFORE, in the light of all the foregoing, [Atlas'] claim for issuance of tax credit certificate or refund of value-added taxes for the first quarter of 1993 is hereby DENIED for insufficiency of evidence. No pronouncement as to costs.
>
> SO ORDERED.[4]

We note that respondent CIR filed his May 24, 1995 Answer asserting that Atlas has the burden of proving erroneous or illegal payment of the tax being claimed for refund, as claims for refund are strictly construed against the taxpayer. However, the CIR did not present any evidence before the CTA nor file a memorandum, thus constraining the CTA to resolve the case before it solely on the basis of the evidence presented by Atlas.

In denying Atlas' claim for tax credit or refund, the CTA held that Atlas failed to present sufficient evidence to warrant the grant of tax credit or refund for the alleged input taxes paid by Atlas. Relying on Revenue Regulation No. (RR) 3-88 which was issued to implement the then VAT law and list the documents to be submitted in actions for refunds or tax credits of input taxes in export sales, it found that the documents submitted by Atlas did not comply with said regulation. It pointed out that Atlas failed to submit photocopies of export documents, invoices, or receipts evidencing the sale of goods and others. Moreover, the Certification by Atlas' bank, Hongkong Shanghai Banking Corporation, did not indicate any conversion rate for US dollars to pesos. Thus, the CTA could not ascertain the veracity of the

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[4] *Id*. at 69.

contents indicated in Atlas' VAT return as export sales and creditable or refundable input VAT.

Atlas timely filed its Motion for Reconsideration of the above decision contending that it relied on Sec. 106 of the Tax Code which merely required proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines. Consequently, Atlas asserted that the documents it presented, coupled with the testimony of its Accounting and Finance Manager, Isabel Espeno, sufficiently proved its case. It argued that RR 3-88 was issued for claims for refund of input VAT to be processed by the BIR, that is, for administrative claims, and not for judicial claims as in the present case. Anyhow, Atlas prayed for a re-trial, even as it admitted that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied for Atlas to submit the basis required under the regulation.

Atlas' motion for reconsideration was rejected by the CTA through its January 5, 1998 Resolution, ruling that it is within its discretion to ascertain the veracity of the claims for refund which must be strictly construed against Atlas. Moreover, it also rejected Atlas' prayer for a re-trial under Sec. 2 of Rule 37 of the Rules of Court, as Atlas failed to submit the required affidavits of merits.

The Ruling of the Court of Appeals

On Atlas' appeal, the CA denied and dismissed Atlas' petition on the ground of insufficiency of evidence to support Atlas' action for tax credit or refund. Thus, through its May 16, 2003 Decision, the CA sustained the CTA; and consequently denied Atlas' motion for reconsideration.

The CA ratiocinated that the CTA cannot be faulted in denying Atlas' action for tax credit or refund, and in denying Atlas' prayer for a new trial. The CA concurred with the CTA in the finding that Atlas' failure to submit the required documents in accordance with RR 3-88 is fatal to Atlas' action, for, without these documents, Atlas' VAT export sales indicated in its amended VAT return and the creditable or refundable input VAT could

not be ascertained. The CA struck down Atlas' contention that it has sufficiently established the existence of its export sales through the testimony of its Accounting and Finance Manager, as her testimony is not required under RR 3-88 and is self-serving.

Also, the CA rejected Atlas' assertion that RR 3-88 is applicable only to administrative claims and not to a judicial proceeding, since it is clear under Sec. 245 (now Sec. 244 of the NIRC) that "[t]he Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." Thus, according to the CA, RR 3-88 implementing the VAT law is applicable to judicial proceedings as this Court held in *Eslao v. COA* that "administrative policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great weight."[5] The CA likewise agreed with the CTA in denying a new trial for Atlas' failure to attach the necessary affidavits of merits required under the rules.

The Issues

Hence, the instant petition of Atlas raising the following grounds for our consideration:

A. In rendering the assailed Decision and Resolution, the Court of Appeals failed to decide this matter in accordance with law or with the applicable decisions of the Supreme Court.

B. In rendering the assailed Decision and Resolution the Court of Appeals is guilty of grave abuse of discretion amounting to a lack or excess of jurisdiction when it violated Atlas' right to due process and sanctioned a similar error from the Court of Tax Appeals' (CTA), calling for the exercise of this Honorable Court's power of supervision.[6]

The foregoing issues can be simplified as follows: *first*, whether Atlas has sufficiently proven entitlement to a tax credit or refund; and *second*, whether Atlas should have been accorded a new trial.

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[5] G.R. No. 108310, September 1, 1994, 236 SCRA 161, 171.

[6] *Rollo*, p. 17.

The Court's Ruling

The petition has no merit.

First Issue: Atlas failed to show sufficient proof

Consistent with its position before the courts *a quo*, Atlas argues that the requirements under RR 3-88 are only applicable in administrative claims for refunds before the BIR and not for judicial claims, as in the instant case. And that it is CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which applies and which Atlas asserts it has complied with. It contends that CTA Circular No. 10-97, being the later law, is deemed to have qualified RR 3-88. Thus, it contends that what is only required is a submission of a summary of the invoices and a certification from an independent public accountant.

We are not persuaded.

First, we reiterate the prevailing rule that the findings of fact of the CA are generally conclusive and binding and the Court need not pass upon the supporting evidence. For, it is not this Court's function to analyze or weigh evidence all over again.[7] Stated a bit differently, the CA's findings of fact affirming those of the trial court will not be disturbed by the Court.[8] This is as it should be for the trial court, as trier of facts, is best equipped to make the assessment of issues raised and evidence adduced before it. Therefore, its factual findings are generally not disturbed on appeal unless it is perceived to have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision involved. In the instant case, we find no cogent reason to depart from this general principle.

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[7] *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580; citing *Alipoon v. Court of Appeals*, G.R. No. 127523, March 22, 1999, 305 SCRA 118.

[8] *Acosta v. Enriquez*, G.R. No. 140967, June 26, 2003, 405 SCRA 55, 59.

Second, the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34[9] of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts *a quo* evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts *a quo* likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return.

It must be noted that the most competent evidence must be adduced and presented to prove the allegations in a complaint, petition, or protest before a judicial court. And where the best evidence cannot be submitted, secondary evidence may be presented. In the instant case, the pertinent documents which are the best pieces of evidence were not presented.

Third, the summary presented by Atlas does not replace the pertinent invoices, receipts, and export sales documents as competent evidence to prove the fact of refundable or creditable input VAT. Indeed, the summary presented with the certification by an independent Certified Public Accountant (CPA) and the testimony of Atlas' Accounting and Finance Manager are merely corroborative of the actual input VAT it paid and the actual export sales. Otherwise, the pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate Atlas' claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA and the testimony of Atlas' employee on the export sales. And when these pertinent documents are not presented, these could not be corroborated as is true in the instant case.

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[9] SEC. 34. *Offer of evidence*.—The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Fourth, Atlas' mere allegations of the figures in its amended VAT return for the first quarter of 1993 as well as in its petition before the CTA are not sufficient proof of the amount of its refund entitlement. They do not even constitute evidence[10] adverse to CIR against whom they are being presented.[11] While Atlas indeed submitted several documents, still, the CTA could not ascertain from them the veracity of the figures as the documents presented by Atlas were not sufficient to prove its action for tax credit or refund. Atlas has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Neither can we ascertain the veracity of Atlas' alleged input VAT taxes which are refundable nor the alleged actual export sales indicated in the amended VAT return.

Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions,"[12] and are to be construed *strictissimi juris* against the taxpayer.

Fifth, it is thus academic whether compliance with the documentary requirements of RR 3-88 is necessary. Suffice it to say that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed.[13] It has not been disputed that RR 3-88 has been duly promulgated pursuant to the rule-making power of the Secretary of Finance upon the recommendation of the CIR. As aptly held by the courts *a quo*, citing *Eslao*,[14] these RRs or administrative issuances have the force of law and are entitled to great weight.

Sixth, it would not be amiss to point out that Atlas' contention on the applicability of CTA Circular No. 10-97 is misplaced.

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[10] *Lagasca v. De Vera*, 79 Phil. 376, 381 (1947).

[11] *Sambrano v. Red Line Transportation Co., Inc.*, 68 Phil. 652, 655 (1939).

[12] *Commissioner of Internal Revenue v. Solidbank Corp.*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461; citations omitted.

[13] *Id*. at 448.

[14] *Supra* note 5.

For one, said circular amended CTA Circular No. 1-95 only in 1997 whereas the proceedings of the instant case were conducted prior to 1997. In fact, Atlas' Formal Offer of Evidence[15] was filed before the CTA on September 2, 1996. For another, even if said circular is retroactively applied for being procedural, still, it does not afford Atlas relief as the documentary and testimonial pieces of evidence adduced before the CTA are insufficient to prove the claim for refund or tax credit.

Second Issue: No denial of due process

Atlas asserts denial of due process when the courts *a quo* denied its prayer to be given the opportunity to present the required documents, asserting that the reliance by the courts *a quo* on Sec. 2 of Rule 37 of the 1997 Revised Rules on Civil Procedure is misplaced as said proviso applies only to a motion for new trial and not to a motion for reconsideration.

We are not convinced.

Clearly, Atlas attempted or showed willingness to submit the required documents only after the CTA rendered its decision. Aside from assailing the applicability of RR 3-88, Atlas argued in its motion for reconsideration before the CTA that, on the alternative, the case be re-opened to allow it to present the required documents as it followed in good faith the requirement under Sec. 106 of the 1977 Tax Code, and alleged that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied requiring Atlas to submit the documents needed.

Obviously, Atlas' reliance on Sec. 106 of the 1977 Tax Code is unacceptable for such does not constitute excusable negligence. In short, Atlas is guilty of inexcusable negligence in the prosecution of its case. The courts *a quo* relied on the procedural deficiency of non-compliance with Sec. 2, Rule 37 of the Rules of Court in denying a new trial. In doing so, the courts *a quo* recognized Atlas' motion for reconsideration also as a motion for new trial, which was alternatively prayed for by Atlas.

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[15] *Rollo*, pp. 71-73, dated August 28, 1996.

Be that as it may, even if Atlas has complied with the affidavits-of-merits requirement, its prayer for a new trial would still not prosper. *First*, Atlas is guilty of inexcusable negligence in the prosecution of its case. It is duty-bound to ensure that all proofs required under the rules are duly presented. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim, the CTA is bound by its rules and suppletorily by the Rules of Court. It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required. *Second*, forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. *Third*, and most importantly, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered.

In fine, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

WHEREFORE, we *DENY* the petition for lack of merit, and *AFFIRM* the CA's May 16, 2003 Decision and August 11, 2003 Resolution in CA-G.R. SP No. 46494. Costs against petitioner.

SO ORDERED.

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

Quisumbing (Chairperson), J., concurs in the result.

THIRD DIVISION

[G.R. No. 170479. February 18, 2008]

ANDRE T. ALMOCERA, *petitioner, vs.* **JOHNNY ONG,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; NATURE AND EFFECT OF OBLIGATIONS; RECIPROCAL OBLIGATIONS; THE OBLIGATION OF PETITIONER AND HIS COMPANY WHICH IS TO DELIVER THE TOWNHOUSE UNIT WITHIN THE PRESCRIBED PERIOD IS DETERMINATIVE OF RESPONDENT'S OBLIGATION TO PAY THE BALANCE OF THE PURCHASE PRICE. — Respondent does not ask that ownership of the townhouse be transferred to him, but merely asks that the amount or down payment he had made be returned to him. The contract subject of this case contains reciprocal obligations which were to be fulfilled by the parties, *i.e.*, to complete and deliver the townhouse within six months from the execution of the contract to sell on the part of petitioner and FBMC, and to pay the balance of the contract price upon completion and delivery of the townhouse on the part of the respondent. In the case at bar, the obligation of petitioner and FBMC which is to complete and deliver the townhouse unit within the prescribed period, is determinative of the respondent's obligation to pay the balance of the contract price. With their failure to fulfill their obligation as stipulated in the contract, they incurred delay and are liable for damages. They cannot insist that respondent comply with his obligation. Where one of the parties to a contract did not perform the undertaking to which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the other party.

2. ID.; ID.; ID.; ID.; DEMAND BY RESPONDENT WOULD BE USELESS AS THE IMPOSSIBILITY OF COMPLYING WITH PETITIONER AND HIS COMPANY'S OBLIGATION WAS DUE TO THEIR FAULT. — Petitioner insists there was no delay when the townhouse unit was not completed within six months from the signing of the contract inasmuch as the

mere lapse of the stipulated six (6) month period is not by itself enough to constitute delay on his part and that of FBMC, since the law requires that there must either be judicial or extrajudicial demand to fulfill an obligation so that the obligor may be declared in default. He argues there was no evidence introduced showing that a prior demand was made by respondent before the original action was instituted in the trial court. We do not agree. Demand is not necessary in the instant case. Demand by the respondent would be useless because the impossibility of complying with their (petitioner and FBMC) obligation was due to their fault. If only they paid their loans with the LBP, the mortgage on the subject townhouse would not have been foreclosed and thereafter sold to a third person.

3. ID.; ID.; ID.; ID.; CONSIDERING THAT PETITIONER DID NOT COMPLY WITH THEIR OBLIGATION TO COMPLETE AND DELIVER THE TOWNHOUSE UNIT WITHIN THE PERIOD AGREED UPON, RESPONDENT COULD NOT HAVE INCURRED IN DELAY; TO ALLOW PETITIONER AND HIS COMPANY TO KEEP THE DOWNPAYMENT MADE BY RESPONDENT WOULD RESULT IN THEIR UNJUST ENRICHMENT AT THE EXPENSE OF RESPONDENT. — The obligation of respondent to pay the balance of the contract price was conditioned on petitioner and FBMC's performance of their obligation. Considering that the latter did not comply with their obligation to complete and deliver the townhouse unit within the period agreed upon, respondent could not have incurred delay. For failure of one party to assume and perform the obligation imposed on him, the other party does not incur delay. Under the circumstances obtaining in this case, we find that respondent is justified in refusing to pay the balance of the contract price. He was never in possession of the townhouse unit and he can no longer be its owner since ownership thereof has been transferred to a third person who was not a party to the proceedings below. It would simply be the height of inequity if we are to require respondent to pay the balance of the contract price. To allow this would result in the unjust enrichment of petitioner and FBMC. The fundamental doctrine of unjust enrichment is the transfer of value without just cause or consideration. The elements of this doctrine which are present in this case are: enrichment on the part of the defendant; impoverishment on the part of the plaintiff; and lack of cause.

The main objective is to prevent one to enrich himself at the expense of another. It is commonly accepted that this doctrine simply means a person shall not be allowed to profit or enrich himself inequitably at another's expense. Hence, to allow petitioner and FBMC keep the down payment made by respondent amounting to ₱1,060,000.00 would result in their unjust enrichment at the expense of the respondent. Thus, said amount should be returned.

4. ID.; ID.; ID.; ID.; THE DELIBERATE WITHHOLDING BY PETITIONER AND HIS COMPANY OF THE MORTGAGE CONSTITUTE FRAUD AND BAD FAITH. — What is worse is the fact that petitioner and FBMC intentionally failed to inform respondent that the subject townhouse which he was going to purchase was already mortgaged to LBP at the time of the perfection of their contract. This deliberate withholding by petitioner and FBMC of the mortgage constitutes fraud and bad faith. The trial court had this say: In the light of the foregoing environmental circumstances and milieu, therefore, it appears that the defendants are guilty of fraud in dealing with the plaintiff. They performed voluntary and willful acts which prevent the normal realization of the prestation, knowing the effects which naturally and necessarily arise from such acts. Their acts import a dishonest purpose or some moral obliquity and conscious doing of a wrong. The said acts certainly give rise to liability for damages. Article 1170 of the New Civil Code of the Philippines provides expressly that "those who in the performance of their obligations are guilty of fraud and those who in any manner contravene the tenor thereof are liable for damages.

5. ID.; ID.; ID.; ID.; ISSUE OF PIERCING THE VEIL OF CORPORATE FICTION BELATEDLY RAISED; TO ALLOW PETITIONER TO PURSUE SUCH A DEFENSE WOULD UNDERMINE BASIC CONSIDERATIONS OF DUE PROCESS; AWARD OF DAMAGES, UPHELD. — This issue of piercing the veil of corporate fiction was never raised before the trial court. The same was raised for the first time before the Court of Appeals which ruled that it was too late in the day to raise the same. The Court of Appeals declared: In the case below, the pleadings and the evidence of the defendants are one and the same and never had it made to appear that Almocera is a person distinct and separate from the other

> defendant. In fine, we cannot treat this error for the first time on appeal. We cannot in good conscience, let the defendant Almocera raise the issue of piercing the veil of corporate fiction just because of the adverse decision against him. x x x. To allow petitioner to pursue such a defense would undermine basic considerations of due process. Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory not ventilated before the trial court. As to the award of damages granted by the trial court, and affirmed by the Court of Appeals, we find the same to be proper and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Nilo G. Ahat for petitioner.
Florido & Largo Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals dated 18 July 2005 in CA-G.R. CV No. 75610 affirming *in toto* the Decision[2] of Branch 11 of the Regional Trial Court (RTC) of Cebu City in Civil Case No. CEB-23687 and its Resolution[3] dated 16 November 2005 denying petitioner's motion for reconsideration. The RTC decision found petitioner Andre T. Almocera, Chairman and Chief Executive Officer of First Builder Multi-Purpose Cooperative (FBMC), solidarily liable with FMBC for damages.

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[1] Associate Justice Pampio A. Abarintos with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr., concurring; *rollo*, pp. 25-32.

[2] Penned by Hon. Isaias P. Dicdican.

[3] *Id*. at 33-34.

Stripped of non-essentials, the respective versions of the parties have been summarized by the Court of Appeals as follows:

Plaintiff Johnny Ong tried to acquire from the defendants a "townhome" described as Unit No. 4 of Atrium Townhomes in Cebu City. As reflected in a Contract to Sell, the selling price of the unit was ₱3,400,000.00 pesos, for a lot area of eighty-eight (88) square meters with a three-storey building. Out of the purchase price, plaintiff was able to pay the amount of ₱1,060,000.00. Prior to the full payment of this amount, plaintiff claims that defendants Andre Almocera and First Builders fraudulently concealed the fact that before and at the time of the perfection of the aforesaid contract to sell, the property was already mortgaged to and encumbered with the Land Bank of the Philippines (LBP). In addition, the construction of the house has long been delayed and remains unfinished. On March 13, 1999, Lot 4-a covered by TCT No. 148818, covering the unit was advertised in a local tabloid for public auction for foreclosure of mortgage. It is the assertion of the plaintiff that had it not for the fraudulent concealment of the mortgage and encumbrance by defendants, he would have not entered into the contract to sell.

On the other hand, defendants assert that on March 20, 1995, First Builders Multi-purpose Coop., Inc., borrowed money in the amount of ₱500,000.00 from Tommy Ong, plaintiff's brother. This amount was used to finance the documentation requirements of the LBP for the funding of the Atrium Town Homes. This loan will be applied in payment of one (1) town house unit which Tommy Ong may eventually purchase from the project. When the project was under way, Tommy Ong wanted to buy another townhouse for his brother, Johnny Ong, plaintiff herein, which then, the amount of ₱150,000.00 was given as additional partial payment. However, the particular unit was not yet identified. It was only on January 10, 1997 that Tommy Ong identified Unit No. 4 plaintiff's chosen unit and again tendered ₱350,000.00 as his third partial payment. When the contract to sell for Unit 4 was being drafted, Tommy Ong requested that another contract to sell covering Unit 5 be made so as to give Johnny Ong another option to choose whichever unit he might decide to have. When the construction was already in full blast, defendants were informed by Tommy Ong that their final choice was Unit 5. It was only upon knowing that the defendants will be selling Unit 4 to some other persons for ₱4million that plaintiff changed his choice from Unit 5 to Unit 4.[4]

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

In trying to recover the amount he paid as down payment for the townhouse unit, respondent Johnny Ong filed a complaint for Damages before the RTC of Cebu City, docketed as Civil Case No. CEB-23687, against defendants Andre T. Almocera and FBMC alleging that defendants were guilty of fraudulent concealment and breach of contract when they sold to him a townhouse unit without divulging that the same, at the time of the perfection of their contract, was already mortgaged with the Land Bank of the Philippines (LBP), with the latter causing the foreclosure of the mortgage and the eventual sale of the townhouse unit to a third person.

In their Answer, defendants denied liability claiming that the foreclosure of the mortgage on the townhouse unit was caused by the failure of complainant Johnny Ong to pay the balance of the price of said townhouse unit.

After the pre-trial conference was terminated, trial on the merits ensued. Respondent and his brother, Thomas Y. Ong, took the witness stand. For defendants, petitioner testified.

In a Decision dated 20 May 2002, the RTC disposed of the case in this manner:

> WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in this case in favor of the plaintiff and against the defendants:
>
> (a) Ordering the defendants to solidarily pay to the plaintiff the sum of ₱1,060,000.00, together with a legal interest thereon at 6% per annum from April 21, 1999 until its full payment before finality of the judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied;
>
> (b) Ordering the defendants to solidarily pay to the plaintiff the sum of ₱100,000.00 as moral damages, the sum of ₱50,000.00 as attorney's fee and the sum of ₱15,619.80 as expenses of litigation; and
>
> (c) Ordering the defendants to pay the cost of this suit.[5]

[5] *Id.* at 47.

The trial court ruled against defendants for not acting in good faith and for not complying with their obligations under their contract with respondent. In the Contract to Sell[6] involving Unit 4 of the Atrium Townhomes, defendants agreed to sell said townhouse to respondent for ₱3,400,000.00. The down payment was ₱1,000,000.00, while the balance of ₱2,400,000.00 was to be paid in full upon completion, delivery and acceptance of the townhouse. Under the contract which was signed on 10 January 1997, defendants agreed to complete and convey to respondent the unit within six months from the signing thereof.

The trial court found that respondent was able to make a down payment or partial payment of ₱1,060,000.00 and that the defendants failed to complete the construction of, as well as deliver to respondent, the townhouse within six months from the signing of the contract. Moreover, respondent was not informed by the defendants at the time of the perfection of their contract that the subject townhouse was already mortgaged to LBP. The mortgage was foreclosed by the LBP and the townhouse was eventually sold at public auction. It said that defendants were guilty of fraud in their dealing with respondent because the mortgage was not disclosed to respondent when the contract was perfected. There was also non-compliance with their obligations under the contract when they failed to complete and deliver the townhouse unit at the agreed time. On the part of respondent, the trial court declared he was justified in suspending further payments to the defendants and was entitled to the return of the down payment.

Aggrieved, defendants appealed the decision to the Court of Appeals assigning the following as errors:

1. THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF HAS A VALID CAUSE OF ACTION FOR DAMAGES AGAINST DEFENDANT(S).

2. THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT ANDRE T. ALMOCERA IS SOLIDARILY

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[6] Exhibit A.

LIABLE WITH THE COOPERATIVE FOR THE DAMAGES TO THE PLAINTIFF.[7]

The Court of Appeals ruled that the defendants incurred delay when they failed to deliver the townhouse unit to the respondent within six months from the signing of the contract to sell. It agreed with the finding of the trial court that the nonpayment of the balance of ₱2.4M by respondent to defendants was proper in light of such delay and the fact that the property subject of the case was foreclosed and auctioned. It added that the trial court did not err in giving credence to respondent's assertion that had he known beforehand that the unit was used as collateral with the LBP, he would not have proceeded in buying the townhouse. Like the trial court, the Court of Appeals gave no weight to defendants' argument that had respondent paid the balance of the purchase price of the townhouse, the mortgage could have been released. It explained:

> We cannot find fault with the choice of plaintiff not to further dole out money for a property that in all events, would never be his. Moreover, defendants could, if they were really desirous of satisfying their obligation, demanded that plaintiff pay the outstanding balance based on their contract. This they had not done. We can fairly surmise that defendants could not comply with their obligation themselves, because as testified to by Mr. Almocera, they already signified to LBP that they cannot pay their outstanding loan obligations resulting to the foreclosure of the townhouse.[8]

Moreover, as to the issue of petitioner's solidary liability, it said that this issue was belatedly raised and cannot be treated for the first time on appeal.

On 18 July 2005, the Court of Appeals denied the appeal and affirmed *in toto* the decision of the trial court. The dispositive portion of the decision reads:

> IN LIGHT OF ALL THE FOREGOING, this appeal is **DENIED**. The assailed decision of the Regional Trial Court, Branch 11, Cebu City in Civil Case No. CEB-23687 is **AFFIRMED *in toto***.[9]

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[7] *Rollo,* pp. 15-16.

[8] *Id*. at 30.

[9] *Id*. at 32.

In a Resolution dated 16 November 2005, the Court of Appeals denied defendants' motion for reconsideration.

Petitioner is now before us pleading his case *via* a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. The petition raises the following issues:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT HAS INCURRED DELAY.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING RESPONDENT'S REFUSAL TO PAY THE BALANCE OF THE PURCHASE PRICE.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT ANDRE T. ALMOCERA IS SOLIDARILY LIABLE WITH THE DEFENDANT COOPERATIVE FOR DAMAGES TO PLAINTIFF.[10]

It cannot be disputed that the contract entered into by the parties was a contract to sell. The contract was denominated as such and it contained the provision that the unit shall be conveyed by way of an Absolute Deed of Sale, together with the attendant documents of Ownership — the Transfer Certificate of Title and Certificate of Occupancy — and that the balance of the contract price shall be paid upon the completion and delivery of the unit, as well as the acceptance thereof by respondent. All these clearly indicate that ownership of the townhouse has not passed to respondent.

In *Serrano v. Caguiat*,[11] we explained:

> A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. The suspensive condition is commonly full payment of the purchase price.

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[10] *Id.* at 16.

[11] G.R. No. 139173, 28 February 2007, 517 SCRA 57, 64-65.

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in *Sing Yee v. Santos* [47 O.G. 6372 (1951)], we held that:

> "x x x [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, non-payment of the price is a negative resolutory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract."

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price.

The Contract to Sell entered into by the parties contains the following pertinent provisions:

4. TERMS OF PAYMENT:

4a. ONE MILLION PESOS (₱1,000,000.00) is hereby acknowledged as Downpayment for the above-mentioned Contract Price.

4b. The Balance, in the amount of TWO MILLION FOUR HUNDRED PESOS (₱2,400,000.00) shall be paid thru financing Institution facilitated by the SELLER, preferably Landbank of the Philippines (LBP).

Upon completion, delivery and acceptance of the BUYER of the Townhouse Unit, the BUYER shall have paid the Contract Price in full to the SELLER.

x x x x x x x x x

6. COMPLETION DATES OF THE TOWNHOUSE UNIT:

The unit shall be completed and conveyed by way of an Absolute Deed of Sale together with the attendant documents of Ownership

in the name of the BUYER — the Transfer Certificate of Title and Certificate of Occupancy within a period of six (6) months from the signing of Contract to Sell.[12]

From the foregoing provisions, it is clear that petitioner and FBMC had the obligation to complete the townhouse unit within six months from the signing of the contract. Upon compliance therewith, the obligation of respondent to pay the balance of ₱2,400,000.00 arises. Upon payment thereof, the townhouse shall be delivered and conveyed to respondent upon the execution of the Absolute Deed of Sale and other relevant documents.

The evidence adduced shows that petitioner and FBMC failed to fulfill their obligation — to complete and deliver the townhouse within the six-month period. With petitioner and FBMC's non-fulfillment of their obligation, respondent refused to pay the balance of the contract price. Respondent does not ask that ownership of the townhouse be transferred to him, but merely asks that the amount or down payment he had made be returned to him.

Article 1169 of the Civil Code reads:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with

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[12] *Rollo,* pp. 28-29.

what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

The contract subject of this case contains reciprocal obligations which were to be fulfilled by the parties, *i.e.*, to complete and deliver the townhouse within six months from the execution of the contract to sell on the part of petitioner and FBMC, and to pay the balance of the contract price upon completion and delivery of the townhouse on the part of the respondent.

In the case at bar, the obligation of petitioner and FBMC which is to complete and deliver the townhouse unit within the prescribed period, is determinative of the respondent's obligation to pay the balance of the contract price. With their failure to fulfill their obligation as stipulated in the contract, they incurred delay and are liable for damages.[13] They cannot insist that respondent comply with his obligation. Where one of the parties to a contract did not perform the undertaking to which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the other party.[14]

On the first assigned error, petitioner insists there was no delay when the townhouse unit was not completed within six months from the signing of the contract inasmuch as the mere lapse of the stipulated six (6) month period is not by itself enough to constitute delay on his part and that of FBMC, since the law requires that there must either be judicial or extrajudicial demand to fulfill an obligation so that the obligor may be declared in default. He argues there was no evidence introduced showing that a prior demand was made by respondent before the original action was instituted in the trial court.

We do not agree.

Demand is not necessary in the instant case. Demand by the respondent would be useless because the impossibility of complying with their (petitioner and FBMC) obligation was due to their

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[13] *Leaño v. Court of Appeals*, 420 Phil. 836, 848 (2001).

[14] *Agustin v. Court of Appeals*, G.R. No. 84751, 6 June 1990, 186 SCRA 375, 383.

fault. If only they paid their loans with the LBP, the mortgage on the subject townhouse would not have been foreclosed and thereafter sold to a third person.

Anent the second assigned error, petitioner argues that if there was any delay, the same was incurred by respondent because he refused to pay the balance of the contract price.

We find his argument specious.

As above-discussed, the obligation of respondent to pay the balance of the contract price was conditioned on petitioner and FBMC's performance of their obligation. Considering that the latter did not comply with their obligation to complete and deliver the townhouse unit within the period agreed upon, respondent could not have incurred delay. For failure of one party to assume and perform the obligation imposed on him, the other party does not incur delay.[15]

Under the circumstances obtaining in this case, we find that respondent is justified in refusing to pay the balance of the contract price. He was never in possession of the townhouse unit and he can no longer be its owner since ownership thereof has been transferred to a third person who was not a party to the proceedings below. It would simply be the height of inequity if we are to require respondent to pay the balance of the contract price. To allow this would result in the unjust enrichment of petitioner and FBMC. The fundamental doctrine of unjust enrichment is the transfer of value without just cause or consideration. The elements of this doctrine which are present in this case are: enrichment on the part of the defendant; impoverishment on the part of the plaintiff; and lack of cause. The main objective is to prevent one to enrich himself at the expense of another. It is commonly accepted that this doctrine simply means a person shall not be allowed to profit or enrich himself inequitably at another's expense.[16] Hence, to allow

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[15] *Agustin v. Court of Appeals, id.*, citing *Abaya v. Standard-Vacuum Oil Co.*, 101 Phil. 1262 (1957).

[16] *P.C. Javier & Sons, Inc. v. Court of Appeals*, G.R. No. 129552, 29 June 2005, 462 SCRA 36, 47.

petitioner and FBMC keep the down payment made by respondent amounting to ₱1,060,000.00 would result in their unjust enrichment at the expense of the respondent. Thus, said amount should be returned.

What is worse is the fact that petitioner and FBMC intentionally failed to inform respondent that the subject townhouse which he was going to purchase was already mortgaged to LBP at the time of the perfection of their contract. This deliberate withholding by petitioner and FBMC of the mortgage constitutes fraud and bad faith. The trial court had this say:

> In the light of the foregoing environmental circumstances and milieu, therefore, it appears that the defendants are guilty of fraud in dealing with the plaintiff. They performed voluntary and willful acts which prevent the normal realization of the prestation, knowing the effects which naturally and necessarily arise from such acts. Their acts import a dishonest purpose or some moral obliquity and conscious doing of a wrong. The said acts certainly give rise to liability for damages (8 Manresa 72; Borrell-Macia 26-27; 3 Camus 34; *O'Leary v. Macondray & Company*, 454 Phil. 812; *Heredia v. Salinas*, 10 Phil. 157). Article 1170 of the New Civil Code of the Philippines provides expressly that "those who in the performance of their obligations are guilty of fraud and those who in any manner contravene the tenor thereof are liable for damages.[17]

On the last assigned error, petitioner contends that he should not be held solidarily liable with defendant FBMC, because the latter is a separate and distinct entity which is the seller of the subject townhouse. He claims that he, as Chairman and Chief Executive Officer of FBMC, cannot be held liable because his representing FBMC in its dealings is a corporate act for which only FBMC should be held liable.

This issue of piercing the veil of corporate fiction was never raised before the trial court. The same was raised for the first time before the Court of Appeals which ruled that it was too late in the day to raise the same. The Court of Appeals declared:

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[17] *Rollo*, p. 44.

In the case below, the pleadings and the evidence of the defendants are one and the same and never had it made to appear that Almocera is a person distinct and separate from the other defendant. In fine, we cannot treat this error for the first time on appeal. We cannot in good conscience, let the defendant Almocera raise the issue of piercing the veil of corporate fiction just because of the adverse decision against him. x x x.[18]

To allow petitioner to pursue such a defense would undermine basic considerations of due process. Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory not ventilated before the trial court.[19]

As to the award of damages granted by the trial court, and affirmed by the Court of Appeals, we find the same to be proper and reasonable under the circumstances.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated 18 July 2005 in CA-G.R. CV No. 75610 is *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[18] *Id.* at 31.

[19] *Valdez v. China Banking Corporation*, G.R. No. 155009, 12 April 2005, 455 SCRA 687, 696.

THIRD DIVISION

[G.R. No. 176842. February 18, 2008]

FLORA LEONCIO, FELICIA LEONCIO and CLARITA LEONCIO (In substitution of Elpidio Leoncio, now deceased), *petitioners, vs.* **OLYMPIA DE VERA and CELSO DE VERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; MATTERS RAISED ARE ESSENTIALLY FACTUAL IN CHARACTER AND OUTSIDE THE AMBIT OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT. — It is a well-established doctrine that in petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. Thus, this Court defined a question of law as distinguished from a question of fact, to wit: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probabtive value of the evidence presented by the litigants or any of them, The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.** A careful perusal of the grounds raised entails the review of the evidence presented, thus, requiring an inquiry into questions of fact. In sum, petitioners seek this Court's determination of the weight, credence, and probative value of the evidence presented which

were adequately passed upon by the RTC and the CA. Without doubt, the matters raised are essentially factual in character and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. Petitioner ought to remember that this Court is not a trier of facts. It is not for this Court to weigh these pieces of evidence all over again.

2. CIVIL LAW; PROPERTY; OWNERSHIP; WHILE IT IS TRUE THAT TAX DECLARATIONS OR REALTY TAX PAYMENTS OF PROPERTY ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP, NEVERTHELESS, THEY ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER, FOR NO ONE IN HIS RIGHT MIND WOULD BE PAYING TAXES FOR A PROPERTY THAT IS NOT IN HIS ACTUAL OR CONSTRUCTIVE POSSESSION. — While it is true tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. As such, this Court agrees with the CA ruling that petitioners failed to overcome the burden of proving their main contention that Emilia solely owned the subject lot.

APPEARANCES OF COUNSEL

Felix B. Lerio for petitioners.
S.Q. Jara Law Office for respondents.

R E S O L U T I O N

NACHURA, *J.*:

In a Petition[1] for Review on *Certiorari* filed before this Court on April 19, 2007, petitioners Flora Leoncio (Flora), Felicia Leoncio (Felicia) and Clarita Leoncio (Clarita) (petitioners) assail

[1] *Rollo*, pp. 9-40.

the Court of Appeals (CA) Decision[2] dated August 17, 2006 and Resolution[3] dated February 28, 2007.

The antecedent facts:

This case flows from a Complaint for Reconveyance of Ownership with Damages filed by the petitioners against the respondents Olympia de Vera (Olympia) and Celso de Vera (Celso) (respondents) before the Regional Trial Court of Malolos, Bulacan (RTC). Flora, Felicia, and Clarita are granddaughters and daughter-in-law, respectively, of the late Emilia Lopez (Emilia). Petitioners allege that Emilia is the sole owner of a parcel of land particularly denominated as Lot 4659, Cad. 344, Bustos Cadastre, with an area of 2,007 square meters and located at Poblacion, Bustos, Bulacan (subject lot). Petitioners contend that one Lorenzo Ramos originally owned the subject lot, who gave the same to Emilia per Relinquishment and Waiver of Rights executed by his heirs. Moreover, the tax declarations from 1933 to 1948 were issued only in the name of Emilia. As such, Emilia is the sole owner of the subject lot. Petitioners also claim that they are not aware of any disposition made by Emilia in favor of any person.

On the other hand, Olympia is the niece of Emilia, being the daughter of the latter's eldest brother, Florentino. Celso is Olympia's son. Respondents allege that Emilia is not the sole owner of the subject lot, as she co-owned it with her other siblings, Macaria Lopez (Macaria) and Pascual Lopez (Pascual). Olympia bought Macaria's 2/5 share of the subject lot sometime in 1970. Pascual's 1/5 share of the subject lot was bought by the Spouses Raymundo which, in turn, Olympia bought in 1986. Respondents aver that the tax declaration for the year 1948 in the name of Emilia was subsequently canceled by Tax Declaration No. 5482 issued in the names of Emilia (2/5 share), Macaria (2/5 share) and Pascual (1/5 share). After Pascual sold his 1/5 share to the Spouses Raymundo in 1955, numerous tax declarations were issued in favor of Emilia, Macaria and Spouses

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[2] *Id*. at 43-82.

[3] *Id*. at 84-85.

Raymundo. Respondents offered in evidence these tax declarations together with the deeds of sale executed by Macaria and Spouses Raymundo in favor of Olympia. After the sale, Olympia paid the real property taxes appurtenant to her 3/5 share of the subject lot and occupied the same.

On May 20, 1997, the RTC dismissed the case for lack of merit and ordered petitioners to pay respondents moral and nominal damages, attorney's fees and litigation expenses. The Court held that petitioners failed to introduce in evidence any deed of transfer involving the subject lot from Lorenzo Ramos to Emilia, and that the tax declarations which were issued solely in the name of Emilia were subsequently canceled. Moreover, it opined that since petitioners took possession of the subject lot only after Emilia's death, there is a great likelihood that petitioners were not truly aware of the status of the subject lot and the extent of Emilia's ownership over the same. The RTC also held that the evidence presented by respondents clearly established the validity of their claims over the 3/5 portion of the subject lot and that they were possessors in good faith.[4]

Aggrieved, petitioners appealed to the CA, which affirmed the RTC ruling with modification by deleting the award of damages, attorney's fees and litigation expenses made by the RTC in favor of the respondents. In addition to the findings of the RTC, the CA also noted that the document denominated as Relinquishment and Waiver of Rights and allegedly executed by the heirs of Lorenzo Ramos attesting to petitioners' claim that Emilia solely owned the subject lot, was not offered in evidence. Petitioners filed a Motion for Reconsideration but the same was denied through CA Resolution dated February 28, 2007.

Hence, this petition which, in sum, raises the following grounds:

The CA committed serious errors of law:

1. In holding that the subject lot is not solely owned by the late Emilia Lopez;

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[4] RTC Decision; *id*. at 89-104.

2. By giving undue heavy reliance on the presumption that the late Emilia Lopez could have transferred part of her ownership of the subject lot to her sister Macaria Lopez and brother Pascual Lopez to the extent of 2/5 and 1/5 portions respectively;

3. In holding that petitioners are already barred by laches in pursuing their ownership over the subject lot against respondents; and

4. In failing to uphold petitioners' ownership of the subject lot and in failing to award them damages.

The Petition lacks merit.

It is a well-established doctrine that in petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. Thus, this Court defined a question of law as distinguished from a question of fact, to wit:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.**[5]

A careful perusal of the grounds raised entails the review of the evidence presented, thus, requiring an inquiry into questions

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[5] *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña*, G.R. No. 163683, June 8, 2007, citing *Velayo-Fong v. Velayo*, 510 SCRA 320, 329-330 (2006) (emphasis supplied).

of fact. In sum, petitioners seek this Court's determination of the weight, credence, and probative value of the evidence presented which were adequately passed upon by the RTC and the CA. Without doubt, the matters raised are essentially factual in character and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. Petitioners ought to remember that this Court is not a trier of facts. It is not for this Court to weigh these pieces of evidence all over again.[6]

While it is true that tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property.[7] As such, this Court agrees with the CA ruling that petitioners failed to overcome the burden of proving their main contention that Emilia solely owned the subject lot.

Time and again, this Court held that findings of fact of the CA, affirming those of the trial court, are generally final and conclusive on this Court.[8] While this Court has recognized several exceptions[9] to this rule, none of these exceptions finds application

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[6] *Basmayor v. Atencio*, G.R. No. 160573, October 19, 2005, 473 SCRA 382, 389 citing *Omandam v. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483, 488.

[7] *Buenaventura v. Republic*, G.R. No. 166865, March 2, 2007, 517 SCRA 271, 289.

[8] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Spouses Peter and Susan Tan*, G.R. No. 167346, April 2, 2007, citing *Bordalba v. Court of Appeals*, 425 Phil. 407 (2002).

[9] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to

in this case. *Ergo*, we find no cogent reason or reversible error to disturb the common findings of the RTC and the CA as these are amply supported by the law and evidence on record.

WHEREFORE, the instant Petition is *DENIED* for lack of merit. The assailed Court of Appeals Decision dated August 17, 2006 and Resolution dated February 28, 2007 are hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176909. February 18, 2008]

JEFFREY T. GO, *petitioner, vs.* **LEYTE II ELECTRIC COOPERATIVE, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; PUBLIC UTILITIES; ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994 (R.A. NO. 7832); THE INSPECTION IN CASE AT BAR WAS CONDUCTED IN ACCORDANCE WITH SECTION 4 OF R.A. NO. 7832;

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the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion.

PRESENCE OF *BARANGAY* CHAIRMAN DURING THE INSPECTION, SATISFIES THE REQUIREMENT OF THE LAW THAT THE INSPECTION MUST BE IN THE PRESENCE OF AN "OFFICER OF THE LAW." — The inspection was conducted in accordance with Section 4 of R.A. No. 7832. While it is not disputed that petitioner's electric meter had a broken seal and shunting wire, petitioner claims that the foregoing circumstances cannot be considered *prima facie* evidence of illegal use of electricity because the inspection was not conducted in the presence of an "officer of the law" as contemplated under R.A. No. 7832. He argues that only a *barangay* chairman witnessed the inspection, and that his presence failed to satisfy the requirements of the law which specifies the police or the National Bureau of Investigation (NBI) as competent authority to verify the findings of a private electric utility or rural electric cooperative. However, under Section 1 of the Implementing Rules and Regulations of R.A. No. 7832, an officer of the law is defined as one "who by direct provision of the law or by election or by appointment of competent authority, is charged with the maintenance of public order and the protection and security of life and property." Contrary to petitioner's claim, the definition is not limited to members of the police force or the NBI. The rules specifically state that a *barangay* chairman is considered an officer of the law. Thus, his presence during the inspection satisfies the requirements of the law.

2. ID.; ID.; ID.; DISCONNECTION OF ELECTRIC SERVICE; JUSTIFIED ONLY WHEN THE CONSUMER OR HIS REPRESENTATIVE IS CAUGHT *IN FLAGRANTE DELICTO*; IT IS IMPOSSIBLE FOR PETITIONER TO HAVE BEEN CAUGHT IN THE ACT OF COMMITTING AN OFFENSE CONSIDERING THAT HE WAS NOT PRESENT DURING THE INSPECTION, NOR ANY OF HIS REPRESENTATIVES AT HAND. — *In flagrante delicto* means "[i]n the very act of committing the crime." To be caught *in flagrante delicto,* therefore, necessarily implies positive identification by the eyewitness or eyewitnesses. Such is a "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption." Respondent cites Section 6 of R.A. No. 7832 which provides that a private electric utility or rural electric cooperative can immediately disconnect electric service after prior notice when

the consumer or his representative is caught *in flagrante delicto.* In the instant case, it was impossible for petitioner to have been caught in the act of committing an offense considering that he was not present during the inspection. Nor were any of his representatives at hand. The presence of a broken seal and a shunting wire in petitioner's electric meter will not suffice to support a finding that petitioner was *in flagrante delicto.* Such circumstances merely operate as *prima facie* evidence of illegal use of electricity under Section 4 of R.A. No. 7832. Absent a finding of *in flagrante delicto,* there is no basis for the immediate disconnection of petitioner's electric service under Section 6 of R.A. No. 7832. Respondent's reliance on the said provision is clearly misplaced.

3. ID.; ID.; ID.; THE WRIT OF PRELIMINARY INJUNCTION WAS PROPERLY ISSUED AGAINST RESPONDENT COOPERATIVE IN CASE AT BAR; ISSUANCE OF RESTRAINING ORDERS OR WRITS OF INJUNCTION MAY BE RESTRICTED EVEN IN THE ABSENCE OF BAD FAITH OR GRAVE ABUSE OF AUTHORITY, WHEN THE ELECTRIC CONSUMER DEPOSITS A BOND WITH THE COURT IN THE FORM OF CASH OR A CASHIER'S CHECK EQUIVALENT TO THE DIFFERENTIAL BILLING; CASE AT BAR. — The Court of Appeals erred in holding that the only instance where the court can issue a restraining order or injunction is when there is *prima facie* evidence of bad faith or grave abuse of authority. As the law stands, there are two exceptions to the restriction on the issuance of restraining orders or writs of injunction, to wit: 1) when there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority; and 2) when, even in the absence of bad faith or grave abuse of authority, the electric consumer deposits a bond with the court in the form of cash or a cashier's check equivalent to the differential billing. In the instant case, petitioner filed a bond in the form of a cashier's check in the amount of One Hundred One Thousand Five Hundred Ninety Seven and 99/100 (₱101,597.99), the equivalent of the differential billing charged against him by respondent in compliance with Section 9 of R.A. No. 7832 and Rule VIII of the Implementing Rules and Regulations of R.A. No. 7832. While the law was crafted primarily to deter the pilferage of electricity through the creation of *prima facie* presumptions in certain circumstances, it was not intended to

completely deprive consumers of their right to protect themselves. It must be emphasized that the issuance of an injunction or restraining order, even in the absence of bad faith and grave abuse of authority, provides ample protection to both the consumer and the electric company. It does not render the law toothless because the required bond, in the form of cash or cashier's check and in the amount of the differential billing and other charges, protects the interest of the private electric utility or rural electric cooperative concerned.

4. ID.; ID.; ID.; RESPONDENT COOPERATIVE IS NOT LEFT WITHOUT A REMEDY AGAINST THE ISSUANCE OF A WRIT OF INJUNCTION; RESPONDENT CAN FILE A COUNTERBOND IN ORDER TO DISSOLVE THE INJUNCTION. — We note that respondent is not left without a remedy against the issuance of a writ of injunction. As pointed out by petitioner, respondent can file a counterbond in order to dissolve such injunction. In *Manila Electric Company v. Navarro-Domingo*, we held that the electric company may avail of the remedy which is also provided in Section 9 of R.A. No. 7832. Thus: At all events, petitioner was not without remedy against the issuance by public respondent of the writ. For Section 9 of still the same aforecited statute provides: Section 9. x x x If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing," penalties and other charges, or to the total value of the subject matter of the action: **Provided, however, That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required***: Provided, finally,* That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reason for its order.

APPEARANCES OF COUNSEL

Bartolome C. Lawsin and *Dexter L. Aguilar* for petitioner.
Santo Law Office for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari*[1] assails the November 30, 2006 Decision[2] of the Court of Appeals in CA-G.R. CEB-SP No. 02010 setting aside the April 4, 2006 and May 2, 2006 Orders of Branch 6 of the Regional Trial Court of Tacloban City in Special Civil Case No. 2006-03-24, which ordered the issuance of a writ of injunction against respondent Leyte II Electric Cooperative, Inc. (LEYECO II). Also assailed is the February 27, 2007 Resolution[3] denying the motion for reconsideration.

The facts are as follows:

Petitioner Jeffrey T. Go is a resident of Block 16, Lot 14, Imelda Village, Tacloban City. He bought the property from Rosita Mancera, who is the registered consumer and member of respondent LEYECO II.

At about 10:20 a.m. of February 13, 2006, respondent's inspection team went to petitioner's residence to inspect his electric meter. They requested the occupant of the house to witness the inspection but were told that the owner was out of town. Hence, it was Barangay Chairman Jesus Alex Alusa of Barangay 36A, Imelda Village and SPO3 Glen Trinidad who witnessed the same. Upon inspection, the team discovered that the electric meter had a broken seal, and that it had been tampered with through the installation of a shunting wire at the back of the meter insulating terminal block.

On March 7, 2006, petitioner received from respondent a "Notice of Apprehension and Disconnection,"[4] notifying him

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

[2] *Id*. at 20-30. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla.

[3] *Id*. at 50-55.

[4] *Id*. at 56.

of the results of the inspection and his liability for violation of the Service Contract as well as Republic Act (R.A.) No. 7832, otherwise known as "An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses by Phasing Out Pilferage Losses as a Component thereof, and for Other Purposes."[5] He was assessed ₱101,597.99 for pilferage differential billing and surcharges and was given ten days within which to settle the amount otherwise his electric service will be disconnected.

Petitioner immediately filed a "Petition for Injunction and Damages with Preliminary Injunction with a Prayer for the Issuance of a Temporary Restraining Order" [6] before the Regional Trial Court of Tacloban City. He claimed that the inspection was irregular and illegal, and that respondent had no legal basis to cause the disconnection of his electric service.

On March 16, 2006, Executive Judge Salvador Apurillo issued a 72-hour temporary restraining order enjoining respondent from disconnecting petitioner's electric service.[7] Thereafter, the case was raffled to Branch 6 of the Regional Trial Court of Tacloban City and was docketed as Special Civil Case No. 2006-03-24.

On March 20, 2006, the Regional Trial Court issued an order extending the 72-hour temporary restraining order to a period of 20 days.[8] Upon hearing and petitioner's filing of a bond in an amount equivalent to the differential billing, the trial court issued an order dated April 4, 2006,[9] granting the issuance of a writ of preliminary injunction against respondent. Respondent moved for reconsideration but was denied.[10]

Respondent filed a petition for *certiorari* before the Court of Appeals, which reversed and set aside the orders of the

[5] Promulgated on December 8, 1994.

[6] CA *rollo*, pp. 26-34.

[7] *Id*. at 39-40.

[8] *Id*. at 41.

[9] *Rollo*, pp. 57-58.

[10] *Id*. at 59.

Regional Trial Court in its November 30, 2006 Decision, as follows:

> In a nutshell, private respondent failed to substantiate his allegation that the inspection conducted by petitioner was made with evident bad faith and/or grave abuse of authority. On the same note, We find public respondent to have gravely abused his discretion in granting private respondent's prayer for the issuance of a writ of injunction against petitioner.
>
> WHEREFORE, in view of the foregoing, we find the instant petition to be impressed with merit. The assailed orders dated April 4, 2006 and May 2, 2006 rendered by public respondent are REVERSED and SET ASIDE.
>
> SO ORDERED.[11]

Petitioner's motion for reconsideration was denied, hence this petition.

Petitioner claims that respondent failed to comply with R.A. No. 7832 when it conducted the inspection of his electric meter; that he was not caught *in flagrante delicto* of illegal use of electricity; and that the issuance of a writ of injunction against respondent was proper considering that he had filed a bond with the trial court.

On the other hand, respondent contends that the presence of a barangay chairman and a police officer during the inspection satisfied the requirements of the law; that petitioner was caught *in flagrante delicto*; and that under Section 9 of R.A. No. 7832, a writ of preliminary injunction or restraining order can be issued against a private electric utility or rural cooperative only when there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.

The issues for resolution are as follows: 1) whether the inspection of petitioner's electric meter was in accordance with R.A. No. 7832; 2) whether petitioner was caught *in flagrante delicto*; and 3) whether the writ of preliminary injunction was properly issued against respondent LEYECO II.

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[11] *Id.* at 29.

We find merit in the petition.

The inspection was conducted in accordance with Section 4 of R.A. No. 7832, which states:

SECTION 4. *Prima Facie Evidence.* — (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x

x x x x x x x x x

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph or log;

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;

x x x x x x x x x

(viii) x x x Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, **must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB**). (Emphasis supplied)

While it is not disputed that petitioner's electric meter had a broken seal and shunting wire, petitioner claims that the foregoing circumstances cannot be considered *prima facie* evidence of illegal use of electricity because the inspection was not conducted in the presence of an "officer of the law" as contemplated under R.A. No. 7832. He argues that only a *barangay* chairman witnessed the inspection, and that his presence failed to satisfy the requirements of the law which specifies the police or the National Bureau of Investigation (NBI) as competent authority to verify the findings of a private electric utility or rural electric cooperative.

However, under Section 1[12] of the Implementing Rules and Regulations of R.A. No. 7832, an officer of the law is defined as one "who by direct provision of the law or by election or by appointment of competent authority, is charged with the maintenance of public order and the protection and security of life and property." Contrary to petitioner's claim, the definition is not limited to members of the police force or the NBI. The rules specifically state that a *barangay* chairman is considered an officer of the law. Thus, his presence during the inspection satisfies the requirements of the law.

In any event, the records show that SPO3 Glen Trinidad likewise witnessed the inspection. Respondent submitted a photograph[13] as evidence, and the police officer signed the Notice of Apprehension and Disconnection.[14] It is clear therefore that the inspection was made in accordance with Section 4 of R.A. No. 7832.

We now come to the issue whether petitioner was caught *in flagrante delicto*.

In flagrante delicto means "[i]n the very act of committing the crime." To be caught *in flagrante delicto*, therefore, necessarily implies positive identification by the eyewitness or eyewitnesses. Such is a "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption."[15]

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[12] Rule III. Section 1. *Prima facie* evidence of illegal use of electricity. — x x x

x x x x x x x x x

An officer of the law is any person who by direct provision of the law or by election or by appointment of competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, **barangay chairman**, barangay councilman, barangay leader, officer, or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor, and municipal fiscal.

[13] *Rollo*, p. 96.

[14] *Supra* note 4.

[15] *People v. Fronda*, 384 Phil. 732, 744 (2000).

Respondent cites Section 6 of R.A. No. 7832 which provides that a private electric utility or rural electric cooperative can immediately disconnect electric service after prior notice when the consumer or his representative is caught *in flagrante delicto*. It reads:

> SEC. 6. *Disconnection of Electric Service.* — **The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect,** without the need of a court or administrative order, and deny restoration of the same, **when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *in flagrante delicto* doing any of the acts enumerated in Section 4 (a) hereof**, x x x." (Emphasis and underscoring supplied)

In the instant case, it was impossible for petitioner to have been caught in the act of committing an offense considering that he was not present during the inspection. Nor were any of his representatives at hand. The presence of a broken seal and a shunting wire in petitioner's electric meter will not suffice to support a finding that petitioner was *in flagrante delicto*. Such circumstances merely operate as *prima facie* evidence of illegal use of electricity under Section 4 of R.A. No. 7832.

Absent a finding of *in flagrante delicto*, there is no basis for the immediate disconnection of petitioner's electric service under Section 6 of R.A. No. 7832. Respondent's reliance on the said provision is clearly misplaced.

As to whether the writ of preliminary injunction was properly issued against respondent LEYECO II, we rule in the affirmative.

Section 9 of R.A. No. 7832 provides that unless there is *prima facie* evidence that the disconnection of electric service was made with evident bad faith or grave abuse of authority, a writ of injunction or restraining order may not issue against any private electric utility or rural electric cooperative exercising the right and authority to disconnect such service. However, the second paragraph of the same provision provides for another

instance when a writ of injunction or restraining order may be issued. Thus:

SEC. 9. *Restriction on the Issuance of Restraining Orders or Writs of Injunction.* — No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.

If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or a cashier's check equivalent to the "differential billing," penalties and other charge, or to the total value of the subject matter of the action: *Provided, however,* That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: *Provided, finally,* That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for its order. (Emphasis supplied)

Consistent with the foregoing provision, Rule VIII of the Implementing Rules and Regulations of R.A. No. 7832 specifically states:

Rule VIII

ISSUANCE OF RESTRAINING
ORDERS OR
WRITS OF INJUNCTION

Section 1. Issuance of the Writ of Injunction. — Unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority, no writ of injunction or restraining order shall be issued by any court against any utility or cooperative exercising the right and authority to disconnect electric service as provided in this Rules.

Section 2. Filing of Bond/Counterbond. — **A writ of injunction or restraining order issued by a court in the absence of evident**

bad faith or grave abuse of authority on the part of the utility or cooperative concerned shall be effective only when the affected person/customer files a bond with the court in the form of cash or cashier's check equivalent to the differential billing, penalties and other charges in cases of illegal use of electricity. Such writ of injunction or restraining order shall automatically be refused or, if already granted, shall be dissolved upon the filing by the utility or cooperative concerned of a counterbond similar in form and amount as that above required. (Emphasis supplied)

The Court of Appeals erred in holding that the only instance where the court can issue a restraining order or injunction is when there is *prima facie* evidence of bad faith or grave abuse of authority.[16] As the law stands, there are two exceptions to the restriction on the issuance of restraining orders or writs of injunction, to wit: 1) when there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority; and 2) when, even in the absence of bad faith or grave abuse of authority, the electric consumer deposits a bond with the court in the form of cash or a cashier's check equivalent to the differential billing.

In the instant case, petitioner filed a bond in the form of a cashier's check in the amount of One Hundred One Thousand Five Hundred Ninety-Seven and 99/100 (₱101,597.99), the equivalent of the differential billing charged against him by respondent in compliance with Section 9 of R.A. No. 7832 and Rule VIII of the Implementing Rules and Regulations of R.A. No. 7832.

While the law was crafted primarily to deter the pilferage of electricity through the creation of *prima facie* presumptions in certain circumstances, it was not intended to completely deprive consumers of their right to protect themselves. It must be emphasized that the issuance of an injunction or restraining order, even in the absence of bad faith and grave abuse of authority, provides ample protection to both the consumer and the electric company. It does not render the law toothless because the required bond, in the form of cash or cashier's check and

[16] *Rollo*, p. 25.

in the amount of the differential billing and other charges, protects the interest of the private electric utility or rural electric cooperative concerned.

Moreover, we note that respondent is not left without a remedy against the issuance of a writ of injunction. As pointed out by petitioner, respondent can file a counterbond in order to dissolve such injunction. In *Manila Electric Company v. Navarro-Domingo*,[17] we held that the electric company may avail of the remedy which is also provided in Section 9 of R.A. No. 7832. Thus:

> At all events, petitioner was not without remedy against the issuance by public respondent of the writ. For Section 9 of still the same aforecited statute provides:
>
> Section 9.
>
> x x x x x x x x x
>
> If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing," penalties and other charges, or to the total value of the subject matter of the action: *Provided, however,* **That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required**: *Provided, finally,* That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reason for its order.[18] (Emphasis and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The November 30, 2006 Decision and February 27, 2007 Resolution of the Court of Appeals are *REVERSED and SET ASIDE*. The April 4, 2006 and May 2, 2006 Orders of Branch 6 of the Regional

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[17] G.R. No. 161893, June 27, 2006, 493 SCRA 363.

[18] *Id*. at 374-375.

Trial Court of Tacloban City in Special Civil Case No. 2006-03-24 which ordered the issuance of a writ of injunction against respondent and denied the motion for reconsideration are hereby *REINSTATED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 178881. February 18, 2008]

SPOUSES ALEX and JULIE LAM, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; A MINISTERIAL ACT FOR THE TRIAL COURT TO ISSUE AFTER THE CONSOLIDATION OF THE TITLE IN THE BUYER'S NAME FOR FAILURE OF THE MORTGAGOR TO REDEEM THE PROPERTY. — It is settled that the issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. It is undisputed that herein petitioners failed to redeem the property within the redemption period and thereafter, ownership was consolidated in favor of herein respondent and a new certificate of title (TCT No.

T-327605) was issued in its name. Thus, it was a purely ministerial duty for the trial court to issue a writ of possession in favor of herein respondent upon the latter's filing of a petition.

2. ID.; ID.; ID.; ID.; ISSUE REGARDING THE VALIDITY OF THE MORTGAGE OR ITS FORECLOSURE IS NOT A LEGAL GROUND FOR REFUSING THE ISSUANCE OF A WRIT OF POSSESSION; CASE AT BAR. — We note that the issue regarding the validity of the mortgage of its foreclosure is not a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or of the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the ensuing outcome of the proceedings in Civil Case No. 30,216-2004.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioners.
Melzar P. Garcia for respondent.

R E S O L U T I O N

NACHURA, *J.*:

This Petition for Review on *Certiorari* assails the October 10, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 00088, and the July 11, 2007 Resolution[2] denying the motion for its reconsideration.

Petitioners Alexander and Julie Lam obtained a loan of ₱2,000,000.00 from the respondent Metropolitan Bank & Trust Company. To secure its payment, petitioners executed a deed of real estate mortgage[3] over their property in Davao City, covered by TCT No. T-115893. Petitioners were subsequently granted

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[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez, concurring; *rollo*, pp. 52-60.

[2] *Id*. at 61-64.

[3] *Id*. at 65-68.

additional loans and signed several amendments to the real estate mortgage.[4]

Petitioners, however, failed to pay the loans; hence, respondent instituted an extrajudicial foreclosure proceeding with the Office of the Clerk of Court and the *Ex-Officio* Sheriff of Davao, which was granted by the latter. A sheriff's sale was held and the property was awarded to the respondent as the sole bidder. A Provisional Certificate of Sale[5] was issued in favor of the respondent on May 20, 1998, and it was registered with the Registry of Deeds on July 7, 1998.[6]

Petitioners failed to redeem the property within the one-year redemption period. Accordingly, a Final Certificate of Sale in favor of the respondent was executed by the Sheriff on October 1, 1999.[7] Respondent consolidated its title to the subject property; thus, TCT No. T-115893 in the name of petitioners was cancelled and TCT No. T-327605[8] in the name of respondent was issued.

Respondent demanded that petitioners turn over actual possession of the subject property,[9] but the latter failed and refused to do so. This prompted respondent to file a Complaint[10] for the issuance of a writ of possession with the Regional Trial Court (RTC) of Davao City, with the case docketed as Other Case No. 097-2001, and raffled to Branch 13.

Summons and notice of hearing were then sent to petitioners, who filed their answer denying the material allegations in the complaint. They averred that respondent's complaint was fatally defective for it did not allege its capacity to sue and be sued. Likewise, there was no showing that the officer who signed the

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[4] *Id*. at 79-82.

[5] *Id*. at 83-84.

[6] *Id*. at 84.

[7] *Id*. at 89-90.

[8] *Id*. at 91.

[9] *Id*. at 92.

[10] *Id*. at 71-76.

verification and certification was duly authorized to represent the respondent. Petitioners also denied that they obtained the ₱3,900,000.00 loan.

During the pre-trial conference, the RTC directed the parties to proceed to mediation. The parties, however, failed to arrive at an amicable settlement; hence, the case was referred back to the RTC for the continuation of the pre-trial conference.

At the pre-trial conference on October 15, 2003, respondent manifested and moved that the complaint for writ of possession should be heard *ex parte*. The RTC then directed the parties to submit their respective memoranda on this issue.

On January 16, 2004, the RTC resolved respondent's motion in this wise:

> It would appear from the caption of this case that this case should be treated as an adversarial proceeding. In fact, the court itself issued summons and copy of the complaint to defendants, and directed them to file their Answer (which they did) to the complaint.
>
> However, this case, as correctly noted by plaintiff (petitioner) is not an ordinary civil case, and it should not be treated as such. To determine how this case should be treated, we can only be guided by the rulings of the Supreme Court on the matter.
>
> x x x x x x x x x
>
> It is clear from the law and jurisprudence that this case should be treated as an *ex parte* proceeding and not an adversarial one. Such being the case, the defendant/respondent should not be allowed to participate in this case as an adverse party as if the same is an ordinary civil action.
>
> According to the Supreme Court, any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ is to be determined not in this proceeding for issuance of a writ of possession, but in subsequent proceedings as outlined in Section 8 of Act 3135.
>
> WHEREFORE, in view of the foregoing, the court rules that the proceeding in case is *ex parte*, and not adversarial. As such, defendant shall not be allowed to participate in the hearing of this case. The

pre-trial conference set on March 15, 2004, is hereby converted into the reception of plaintiff/petitioner's evidence *ex-parte*.

SO ORDERED.[11]

On January 23, 2004, petitioners filed a complaint for specific performance and annulment of foreclosure of mortgage with the RTC. The case was docketed as Civil Case No. 30,216-2004, and, likewise, raffled to Branch 13.

Subsequently, on February 11, 2004, petitioners filed a motion for reconsideration of the January 16, 2004 Order issued in Other Case No. 097-2001.

On July 19, 2004, the RTC granted petitioners' motion for reconsideration. In reversing its earlier Order and allowing petitioners to participate in the proceedings, the RTC declared that respondent was estopped from demanding a resolution *ex parte*, after allowing petitioners to participate in the proceedings. The RTC added that "under equitable circumstances," the duty of the court to issue a writ of possession ceased to be ministerial, and the existence of these "equitable circumstances" can only be determined in adversarial proceedings. The respondent filed a motion for reconsideration, but the RTC denied it.

Respondent went to the CA on *certiorari*. On October 10, 2006, the CA rendered the assailed Decision, granting respondent's petition for *certiorari*. Reversing the RTC, the CA declared that the RTC abused its discretion in declaring Other Case No. 097-2001 an adversarial proceeding. According to the CA, law and jurisprudence are explicit that a petition for the issuance of a writ of possession is *ex parte* and not adversarial. It was, therefore, plain and patent error for the RTC to issue orders contravening this basic and well-entrenched legal principle. The CA also declared that the RTC mistakenly opined that it was prudent to consolidate Other Case No. 097-2001 with the civil case for annulment of the foreclosure sale. According to the CA, the rule on the consolidation of actions in a civil procedure covers only "civil actions," and an *ex parte* petition for the issuance

[11] *Id.* at 118-120.

of a writ of possession under Section 7 of Act No. 3135, is not a civil action; thus, it cannot be consolidated with the case for annulment of mortgage. It further held that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession.

Petitioners filed a motion for reconsideration, but the CA denied it on July 11, 2007.

Forthwith, petitioners elevated the case to this Court and in support of their petition allege that:

I

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE HONORABLE REGIONAL TRIAL COURT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDERS DATED 19 JULY 2004 AND 04 OCTOBER 2004 CONSIDERING [THAT] THE LATTER MERELY APPLIED PREVAILING JURISPRUDENCE RECOGNIZING EXCEPTIONS TO THE GENERAL RULE THAT THE PROCEEDINGS FOR THE ISSUANCE OF A WRIT OF POSSESSION IS *EX-PARTE* AND NOT ADVERSARIAL.

II

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE EQUITABLE CONSIDERATIONS EXISTING IN THIS CASE THAT WARRANT THE APPLICATION OF THE EXCEPTIONS TO THE GENERAL RULE THAT THE PROCEEDINGS FOR THE ISSUANCE OF A WRIT OF POSSESSION IS *EX-PARTE* AND NOT ADVERSARIAL.[12]

The petition is without merit.

It is settled that the issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial

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[12] *Id*. at 27.

function.[13] It is undisputed that herein petitioners failed to redeem the property within the redemption period and thereafter, ownership was consolidated in favor of herein respondent and a new certificate of title (TCT No. T-327605) was issued in its name. Thus, it was a purely ministerial duty for the trial court to issue a writ of possession in favor of herein respondent upon the latter's filing of a petition.

The nature of a petition for a writ of possession is explained in the case of *Spouses Norberto Oliveros and Elvira Oliveros v. The Honorable Presiding Judge, Regional Trial Court, Branch 24, Biñan, Laguna and Metropolitan Bank & Trust Company*,[14] *viz.*:

> As to the nature of a petition for a writ of possession, it is well to state that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.
>
> By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135 as amended.
>
> It is not strictly speaking a judicial process as contemplated in Article 433 of the Civil Code. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."
>
> The law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. The

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[13] *Jetri Construction Corp. v. Bank of the Philippine Islands*, G.R. No. 171687, June 8, 2007.

[14] G.R. No. 165963, September 3, 2007.

petitioner need not offer any documentary or testimonial evidence for the court to grant the petition.

In the present case, Metrobank purchased the properties at a public auction following the extrajudicial foreclosure of the subject properties. Certificates of sale over the properties were issued in favor of Metrobank and registered with the Registry of Deeds of Calamba, Laguna, on 4 February 2000. Petitioners as mortgagors failed to redeem the properties within the one-year period of redemption from the registration of the Sheriff's Certificate of Sale thereof with the Registry of Deeds; hence, Metrobank consolidated its ownership over the subject properties.

With this as jurisprudential yardstick, we quote with approval the following disquisition of the CA:

> The respondent judge's line of reasoning in declaring Other Case No. 097-2001 as an adversarial proceeding is simply puerile. The fact that the Spouses Lam were allowed to actively participate in the proceedings for the said case, by filing an Answer and going through pre-trial and mediation, was a glaring procedural anomaly that the court *a quo* had inexcusably abetted. We cannot allow the erring court *a quo* to use that same aberration as an excuse for a continuing defiance of the law and jurisprudence that defines a petition for the issuance of a writ of possession as a non-litigious *ex parte* proceeding that does not require the participation of the mortgagor.[15]

Besides, we note that the issue regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or of the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the ensuing outcome of the proceedings in Civil Case No. 30,216-2004.

In fine, we find no reversible error in the assailed rulings of the CA.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 00088, are *AFFIRMED*.

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[15] *Rollo*, p. 58.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.C. No. 5738. February 19, 2008]

WILFREDO M. CATU, *complainant, vs.* **ATTY. VICENTE G. RELLOSA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; RULE 6.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY APPLIES ONLY TO FORMER GOVERNMENT LAWYERS. — Respondent cannot be found liable for violation of Rule 6.03 of the Code of Professional Responsibility. As worded, that Rule applies only to a lawyer who has *left government service* and in connection "with any matter in which he intervened while in said service." In *PCGG v. Sandiganbayan*, we ruled that Rule 6.03 **prohibits former government lawyers** from accepting "engagement or employment in connection with any matter in which [they] had intervened while in said service." Respondent was an incumbent *punong barangay* at the time he committed the act complained of. Therefore, he was not covered by that provision.

2. ID.; ID.; SECTION 90 OF R.A. 7160, NOT SECTION 7(B)(2) OF R.A. 6713 GOVERNS THE PRACTICE OF PROFESSION OF ELECTIVE LOCAL GOVERNMENT OFFICIALS. — Section 7(b)(2) of RA 6713 prohibits public officials and employees, during their incumbency, from engaging in the private practice of their profession "unless authorized by the Constitution or law, provided that such practice will

not conflict or tend to conflict with their official functions." This is the general law which applies to all public officials and employees. For elective local government officials, Section 90 of RA 7160 governs. This is a special provision that applies specifically to the practice of profession by elective local officials. As a special law with a definite scope (that is, the practice of profession by elective local officials), it constitutes an exception to Section 7(b)(2) of RA 6713, the general law on engaging in the private practice of profession by public officials and employees. *Lex specialibus derogat generalibus*. Under RA 7160, elective local officials of provinces, cities, municipalities and *barangays* are the following: the governor, the vice governor and members of the *sangguniang panlalawigan* for provinces; the city mayor, the city vice mayor and the members of the *sangguniang panlungsod* for cities; the municipal mayor, the municipal vice mayor and the members of the *sangguniang bayan* for municipalities and the *punong barangay*, the members of the *sangguniang barangay* and the members of the *sangguniang kabataan* for *barangays*. Of these elective local officials, governors, city mayors and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives. This is because they are required to render full time service. They should therefore devote all their time and attention to the performance of their official duties.

3. ID.; ID.; AS *PUNONG BARANGAY,* RESPONDENT LAWYER WAS NOT FORBIDDEN TO PRACTICE HIS PROFESSION PROVIDED THAT HE MUST FIRST PROCURE PRIOR PERMISSION OR AUTHORIZATION FROM THE HEAD OF HIS DEPARTMENT AS REQUIRED BY CIVIL SERVICE REGULATIONS. — While, certain local elective officials (like governors, mayors, provincial board members and councilors) are expressly subjected to a total or partial proscription to practice their profession or engage in any occupation, no such interdiction is made on the *punong barangay* and the members of the *sangguniang barangay*. *Expressio unius est exclusio alterius*. Since they are excluded from any prohibition, the presumption is that they are allowed to practice their profession. And this stands to reason because they are not mandated to serve full time. In fact, the *sangguniang barangay* is supposed to hold regular sessions only twice a

month. Accordingly, as *punong barangay*, respondent was not forbidden to practice his profession. However, he should have procured prior permission or authorization from the head of his Department, as required by civil service regulations.

4. ID.; ID.; RESPONDENT SHOULD HAVE OBTAINED THE PRIOR WRITTEN PERMISSION OF THE SECRETARY OF INTERIOR AND LOCAL GOVERNMENT BEFORE HE ENTERED HIS APPEARANCE AS COUNSEL, BUT HE FAILED TO DO SO. — A civil service officer or employee whose responsibilities do not require his time to be fully at the disposal of the government can engage in the private practice of law only with the written permission of the head of the department concerned. Section 12, Rule XVIII of the Revised Civil Service Rules provides: Sec. 12. **No officer or employee shall engage directly in any** private business, vocation, or **profession** or be connected with any commercial, credit, agricultural, or industrial undertaking **without a written permission from the head of the Department**: *Provided*, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government; *Provided, further*, That if an employee is granted permission to engage in outside activities, time so devoted outside of office hours should be fixed by the agency to the end that it will not impair in any way the efficiency of the officer or employee: And *provided, finally*, that no permission is necessary in the case of investments, made by an officer or employee, which do not involve real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer of the board of directors. As *punong barangay*, respondent should have therefore obtained the prior written permission of the Secretary of Interior and Local Government before he entered his appearance as counsel for Elizabeth and Pastor. This he failed to do.

5. ID.; ID.; FAILURE OF RESPONDENT LAWYER TO COMPLY WITH SECTION 12, RULE XVIII OF THE REVISED CIVIL SERVICE RULES CONSTITUTES A VIOLATION OF HIS OATH AS A LAWYER TO OBEY THE LAWS; LAWYERS ARE SERVANTS OF THE LAW, *VIRES LEGIS*, MEN OF THE LAW, AND THEIR PARAMOUNT DUTY TO SOCIETY

IS TO OBEY THE LAW AND PROMOTE RESPECT TO IT. — The failure of respondent to comply with Section 12, Rule XVIII of the Revised Civil Service Rules constitutes a violation of his oath as a lawyer: to obey the laws. Lawyers are servants of the law, *vires legis*, men of the law. Their paramount duty to society is to obey the law and promote respect for it. To underscore the primacy and importance of this duty, it is enshrined as the first canon of the Code of Professional Responsibility. In acting as counsel for a party without first securing the required written permission, respondent not only engaged in the unauthorized practice of law but also violated civil service rules which is a breach of Rule 1.01 of the Code of Professional Responsibility: Rule 1.01 — **A lawyer shall not engage in unlawful**, dishonest, immoral or deceitful ***conduct.***

6. ID.; ID.; A LAWYER WHO DISOBEYS THE LAW DISRESPECTS IT, AND IN SO DOING, HE DISREGARDS LEGAL ETHICS AND DISGRACES THE DIGNITY OF THE LEGAL PROFESSION. — For not living up to his oath as well as for not complying with the exacting ethical standards of the legal profession, respondent failed to comply with Canon 7 of the Code of Professional Responsibility: CANON 7. **A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION** AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. Indeed, a lawyer who disobeys the law disrespects it. In so doing, he disregards legal ethics and disgraces the dignity of the legal profession. Public confidence in the law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Every lawyer should act and comport himself in a manner that promotes public confidence in the integrity of the legal profession. A member of the bar may be disbarred or suspended from his office as an attorney for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

Fortunato F.L. Viray for complainant.

R E S O L U T I O N

CORONA, *J.*:

Complainant Wilfredo M. Catu is a co-owner of a lot[1] and the building erected thereon located at 959 San Andres Street, Malate, Manila. His mother and brother, Regina Catu and Antonio Catu, contested the possession of Elizabeth C. Diaz-Catu[2] and Antonio Pastor[3] of one of the units in the building. The latter ignored demands for them to vacate the premises. Thus, a complaint was initiated against them in the *Lupong Tagapamayapa* of Barangay 723, Zone 79 of the 5th District of Manila[4] where the parties reside.

Respondent, as *punong barangay* of Barangay 723, summoned the parties to conciliation meetings.[5] When the parties failed to arrive at an amicable settlement, respondent issued a certification for the filing of the appropriate action in court.

Thereafter, Regina and Antonio filed a complaint for ejectment against Elizabeth and Pastor in the Metropolitan Trial Court of Manila, Branch 11. Respondent entered his appearance as counsel for the defendants in that case. Because of this, complainant filed the instant administrative complaint,[6] claiming that respondent committed an act of impropriety as a lawyer and as a public officer when he stood as counsel for the defendants despite the fact that he presided over the conciliation proceedings between the litigants as *punong barangay*.

In his defense, respondent claimed that one of his duties as *punong barangay* was to hear complaints referred to the

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[1] Particularly described as lot no. 19, block no. 3, Pas-14849.

[2] Complainant's sister-in-law.

[3] Hereafter, "Elizabeth and Pastor."

[4] Hereafter, "Barangay 723."

[5] These were scheduled on March 15, 2001, March 26, 2001 and April 3, 2001.

[6] Dated July 5, 2002. *Rollo*, pp. 2-23.

barangay's Lupong Tagapamayapa. As such, he heard the complaint of Regina and Antonio against Elizabeth and Pastor. As head of the *Lupon*, he performed his task with utmost objectivity, without bias or partiality towards any of the parties. The parties, however, were not able to amicably settle their dispute and Regina and Antonio filed the ejectment case. It was then that Elizabeth sought his legal assistance. He acceded to her request. He handled her case for free because she was financially distressed and he wanted to prevent the commission of a patent injustice against her.

The complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. As there was no factual issue to thresh out, the IBP's Commission on Bar Discipline (CBD) required the parties to submit their respective position papers. After evaluating the contentions of the parties, the IBP-CBD found sufficient ground to discipline respondent.[7]

According to the IBP-CBD, respondent admitted that, as *punong barangay*, he presided over the conciliation proceedings and heard the complaint of Regina and Antonio against Elizabeth and Pastor. Subsequently, however, he represented Elizabeth and Pastor in the ejectment case filed against them by Regina and Antonio. In the course thereof, he prepared and signed pleadings including the answer with counterclaim, pre-trial brief, position paper and notice of appeal. By so doing, respondent violated Rule 6.03 of the Code of Professional Responsibility:

> Rule 6.03 — A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he intervened while in said service.

Furthermore, as an elective official, respondent contravened the prohibition under Section 7(b)(2) of RA 6713:[8]

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[7] Report and Recommendation dated October 15, 2004 of Commissioner Doroteo B. Aguila of the IBP-CBD. *Id.*, pp. 103-106.

[8] The Code of Conduct and Ethical Standards for Public Officials and Employees.

SEC. 7. *Prohibited Acts and Transactions*. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employees and are hereby declared to be unlawful:

x x x x x x x x x

(b) *Outside employment and other activities related thereto*. — Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) **Engage in the private practice of profession unless authorized by the Constitution or law**, provided that such practice will not conflict or tend to conflict with their official functions; x x x (emphasis supplied)

According to the IBP-CBD, respondent's violation of this prohibition constituted a breach of Canon 1 of the Code of Professional Responsibility:

CANON 1. A LAWYER SHALL UPHOLD THE CONSTITUTION, **OBEY THE LAWS OF THE LAND, PROMOTE RESPECT FOR LAW** AND LEGAL PROCESSES. (emphasis supplied)

For these infractions, the IBP-CBD recommended the respondent's suspension from the practice of law for one month with a stern warning that the commission of the same or similar act will be dealt with more severely.[9] This was adopted and approved by the IBP Board of Governors.[10]

We modify the foregoing findings regarding the transgression of respondent as well as the recommendation on the imposable penalty.

RULE 6.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY APPLIES ONLY TO FORMER GOVERNMENT LAWYERS

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[9] *Supra* note 7.

[10] CBD Resolution No. XVI-2004-476 dated November 4, 2004. *Rollo*, p. 102.

Respondent cannot be found liable for violation of Rule 6.03 of the Code of Professional Responsibility. As worded, that Rule applies only to a lawyer who has *left government service* and in connection "with any matter in which he intervened while in said service." In *PCGG v. Sandiganbayan*,[11] we ruled that Rule 6.03 **prohibits former government lawyers** from accepting "engagement or employment in connection with any matter in which [they] had intervened while in said service."

Respondent was an incumbent *punong barangay* at the time he committed the act complained of. Therefore, he was not covered by that provision.

SECTION 90 OF RA 7160, NOT SECTION 7(B)(2) OF RA 6713, GOVERNS THE PRACTICE OF PROFESSION OF ELECTIVE LOCAL GOVERNMENT OFFICIALS

Section 7(b)(2) of RA 6713 prohibits public officials and employees, during their incumbency, from engaging in the private practice of their profession "unless authorized by the Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions." This is the general law which applies to all public officials and employees.

For elective local government officials, Section 90 of RA 7160[12] governs:

> SEC. 90. *Practice of Profession.* — (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.
>
> (b) *Sanggunian* members may practice their professions, engage in any occupation, or teach in schools except during session hours: *Provided*, That *sanggunian* members who are members of the Bar shall not:

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[11] G.R. Nos. 151809-12, 12 April 2005, 455 SCRA 526. (emphasis in the original)

[12] The Local Government Code of 1992.

(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

(2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;

(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

(4) Use property and personnel of the Government except when the *sanggunian* member concerned is defending the interest of the Government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: *Provided*, That the officials concerned do not derive monetary compensation therefrom.

This is a special provision that applies specifically to the practice of profession by elective local officials. As a special law with a definite scope (that is, the practice of profession by elective local officials), it constitutes an exception to Section 7(b)(2) of RA 6713, the general law on engaging in the private practice of profession by public officials and employees. *Lex specialibus derogat generalibus*.[13]

Under RA 7160, elective local officials of provinces, cities, municipalities and *barangays* are the following: the governor, the vice governor and members of the *sangguniang panlalawigan* for provinces; the city mayor, the city vice mayor and the members of the *sangguniang panlungsod* for cities; the municipal mayor, the municipal vice mayor and the members of the *sangguniang bayan* for municipalities and the *punong barangay*, the members of the *sangguniang barangay* and the members of the *sangguniang kabataan* for *barangays*.

Of these elective local officials, governors, city mayors and municipal mayors are prohibited from practicing their profession

[13] This rule of statutory construction means that a special law repeals a general law on the same matter.

or engaging in any occupation other than the exercise of their functions as local chief executives. This is because they are required to render full time service. They should therefore devote all their time and attention to the performance of their official duties.

On the other hand, members of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan* may practice their professions, engage in any occupation, or teach in schools except during session hours. In other words, they may practice their professions, engage in any occupation, or teach in schools outside their session hours. Unlike governors, city mayors and municipal mayors, members of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan* are required to hold regular sessions only at least once a week.[14] Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.

While, as already discussed, certain local elective officials (like governors, mayors, provincial board members and councilors) are expressly subjected to a total or partial proscription to practice their profession or engage in any occupation, no such interdiction is made on the *punong barangay* and the members of the *sangguniang barangay*. *Expressio unius est exclusio alterius*.[15] Since they are excluded from any prohibition, the presumption is that they are allowed to practice their profession. And this stands to reason because they are not mandated to serve full time. In fact, the *sangguniang barangay* is supposed to hold regular sessions only twice a month.[16]

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[14] Section 52(a), RA 7160. They may also hold special sessions upon the call of the local chief executive or a majority of the members of the *sanggunian* when public interest so demands. (Section 52[b], *id*.)

[15] This rule of statutory construction means that the express mention of one thing excludes other things not mentioned.

[16] *Id*.

Accordingly, as *punong barangay*, respondent was not forbidden to practice his profession. However, he should have procured prior permission or authorization from the head of his Department, as required by civil service regulations.

A LAWYER IN GOVERNMENT SERVICE WHO IS NOT PROHIBITED TO PRACTICE LAW MUST SECURE PRIOR AUTHORITY FROM THE HEAD OF HIS DEPARTMENT

A civil service officer or employee whose responsibilities do not require his time to be fully at the disposal of the government can engage in the private practice of law only with the written permission of the head of the department concerned.[17] Section 12, Rule XVIII of the Revised Civil Service Rules provides:

> Sec. 12. **No officer or employee shall engage directly in any** private business, vocation, or **profession** or be connected with any commercial, credit, agricultural, or industrial undertaking **without a written permission from the head of the Department**: *Provided*, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government; *Provided, further*, That if an employee is granted permission to engage in outside activities, time so devoted outside of office hours should be fixed by the agency to the end that it will not impair in any way the efficiency of the officer or employee: And *provided, finally*, that no permission is necessary in the case of investments, made by an officer or employee, which do not involve real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer of the board of directors. (emphasis supplied)

As *punong barangay*, respondent should have therefore obtained the prior written permission of the Secretary of Interior and Local Government before he entered his appearance as counsel for Elizabeth and Pastor. This he failed to do.

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[17] *See Ramos v. Rada*, A.M. No. P-202, 22 July 1975, 65 SCRA 179; *Zeta v. Malinao*, A.M. No. P-220, 20 December 1978, 87 SCRA 303.

The failure of respondent to comply with Section 12, Rule XVIII of the Revised Civil Service Rules constitutes a violation of his oath as a lawyer: to obey the laws. Lawyers are servants of the law, *vires legis*, men of the law. Their paramount duty to society is to obey the law and promote respect for it. To underscore the primacy and importance of this duty, it is enshrined as the first canon of the Code of Professional Responsibility.

In acting as counsel for a party without first securing the required written permission, respondent not only engaged in the unauthorized practice of law but also violated civil service rules which is a breach of Rule 1.01 of the Code of Professional Responsibility:

> Rule 1.01 — **A lawyer shall not engage in unlawful**, dishonest, immoral or deceitful **conduct**. (emphasis supplied)

For not living up to his oath as well as for not complying with the exacting ethical standards of the legal profession, respondent failed to comply with Canon 7 of the Code of Professional Responsibility:

> CANON 7. **A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION** AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. (emphasis supplied)

Indeed, a lawyer who disobeys the law disrespects it. In so doing, he disregards legal ethics and disgraces the dignity of the legal profession.

Public confidence in the law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar.[18] Every lawyer should act and comport himself in a manner that promotes public confidence in the integrity of the legal profession.[19]

A member of the bar may be disbarred or suspended from his office as an attorney for violation of the lawyer's oath[20] and/or

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[18] *Ducat v. Villalon*, 392 Phil. 394 (2000).

[19] *Id*.

[20] *See* Section 27, Rule 138, RULES OF COURT.

for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.

WHEREFORE, respondent Atty. Vicente G. Rellosa is hereby found *GUILTY* of professional misconduct for violating his oath as a lawyer and Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility. He is therefore *SUSPENDED from the practice of law* for a period of six months effective from his receipt of this resolution. He is sternly *WARNED* that any repetition of similar acts shall be dealt with more severely.

Respondent is strongly advised to look up and take to heart the meaning of the word *delicadeza*.

Let a copy of this resolution be furnished the Office of the Bar Confidant and entered into the records of respondent Atty. Vicente G. Rellosa. The Office of the Court Administrator shall furnish copies to all the courts of the land for their information and guidance.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-07-2394. February 19, 2008]
(Formerly OCA-IPI No. 07-2571-P)

EDGARDO C. RIVERA, *complainant, vs.* **DANVER A. BUENA, Clerk of Court, MeTC, Branch 38, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERKS OF COURT; DUTIES AND RESPONSIBILITIES; EMPHASIZED. — We cannot overemphasize that those charged or connected with the task of dispensing justice carry a heavy burden of responsibility. The clerk of court is the administrative officer of a court and has, *inter alia*, control and supervision over all court records. The Rules of Court charge him with the duty of faithfully keeping the records, papers, files and exhibits in cases pending before his court, as well as the public property committed to his charge, including the library of the court, the seals and furniture belonging to his office. As custodian of the records of the court, it is his duty to ensure that the records are complete and intact. He plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.

2. ID.; ID.; ID.; ID.; ID.; RESPONDENT IS GUILTY OF SIMPLE NEGLECT FOR FAILURE TO ATTACH TO THE RECORDS OF THE CASE WHICH LED TO THE EVENTUAL LOSS OF THE PROSECUTION'S FORMAL OFFER OF EVIDENCE. — When respondent assumed the position of branch clerk of court, it was understood that he was willing, ready and able to do his job with utmost devotion and efficiency. Having a voluminous workload, and being forced to do legal research work are unavailing defenses. Neither can respondent pass the blame to his subordinates. Being the administrative officer and having control and supervision over court records, he should have seen to it that his subordinates performed their functions well. We find respondent guilty of simple neglect of duty for failure to attach to the records of the case which led to the eventual loss of the prosecution's formal offer of evidence. Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee, thus signifying a "disregard of a duty resulting from carelessness or indifference." It is classified under the Uniform Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.

R E S O L U T I O N

TINGA, *J.*:

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets. Negligence in the performance of these duties warrants disciplinary action.[1]

In a sworn Complaint[2] dated 29 March 2007, Edgardo C. Rivera (complainant) charged Danver A. Buena (respondent), Branch Clerk of Court of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 38, with gross neglect of duty, inefficiency and incompetence and conduct prejudicial to the best interest of the service. Complainant claims that he is the private complainant in a criminal case which was filed sometime in October 1996. After the prosecution made its formal offer of evidence on 15 April 2004, it rested its case. When it was the turn of the defense to present its evidence, the accused failed to appear and thus the defense rested its case. On 17 August 2004, the trial court issued an order declaring the case submitted for decision.

On 29 April 2005, or eight (8) months after the case was submitted for decision, counsel for complainant filed an *Ex Parte* Motion for Early Resolution[3] of the case. His motion was not acted upon. Consequently, on 06 November 2006, complainant wrote the Court Administrator, requesting the early resolution of the case. The matter was referred to Judge Catherine Manondon, then acting presiding judge of Branch 38.

On 18 January 2007, complainant received a copy of the Order[4] dated 11 September 2006 which reads:

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[1] Report on the Judicial Audit Conducted in the MTCC, Palayan City, 451 Phil. 437, 447 (2003).

[2] *Rollo*, pp. 7-12.

[3] *Id*. at 37-39.

[4] *Id*. at 44.

When this case was called for hearing, none of the parties appeared. A perusal of the record shows that this case was submitted for decision on August 17, 2004 without offer of evidence by the prosecution.

Accordingly, the prosecution, thru the private prosecutor is given ten (10) days from receipt hereof to offer its evidence, failing which it will be deemed to have waived its right to do so, and this case be submitted for judgment.[5]

Knowing that he had already filed his formal offer of evidence, complainant's counsel personally went to the MeTC Branch 38 to verify the matter. It was discovered that the Formal Offer of Evidence was missing and that the trial court had already issued an Order dated 30 June 2006 declaring that the prosecution had waived its right to formally offer its evidence.[6] The order reads:

The Prosecution having failed to file any Formal Offer of Evidence, it is deemed to have waived its right to do so.

Accordingly, let the reception of defense evidence be held on September 11, 2006 at 2:00 o'clock in the afternoon.

Notify all parties.

SO ORDERED.[7]

Complainant was also surprised when in the afternoon of 5 February 2007 he received a notice of hearing setting the case for hearing at 2:00 in the afternoon of the same date. Complainant was unable to attend the hearing on account of the late receipt of the notice. However, he filed on 21 February 2007 an Omnibus Motion[8] (i) stating the reason for his non-appearance at the 5 February hearing; and (ii) asking the trial court to reconsider its 30 June 2006 Order. Even though the omnibus motion was requested to be set for hearing on 23 February 2007, the trial court set the hearing three months after the motion was filed.[9]

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[5] *Id*.

[6] *Id*. at 9.

[7] *Id*. at 45.

[8] *Id*. at 46-49.

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

According to complainant, he finds it suspicious that respondent did not bother to inform him or his counsel that his formal offer of evidence was missing so that they could remedy the situation. In fact, as of the date of the complaint, respondent had not yet furnished him a copy of the 30 June 2006 Order.[10]

For his part, respondent avers that sometime in February 2006, in the course of scrutinizing the records of undecided civil and criminal cases pending adjudication, he discovered that complainant's case was submitted for decision on 17 August 2004 and that the prosecution failed to offer its documentary evidence. He allegedly instructed several court personnel to look for the formal offer of evidence filed by the prosecution but despite diligent efforts, they failed to locate the same. Nevertheless, he admits that based on office records, specifically the transmittal of pleadings that the prosecution had filed, it appears that complainant's formal offer of evidence was received by the trial court on 26 April 2004. According to respondent, custody of the records went through the hands of several personnel who, during his inquiry, denied having anything to do with the incorporation of the formal offer of evidence in the case files.[11]

Respondent also claims that complainant did not receive a copy of the Order of the Court dated 30 June 2006 because the clerk in charge of the records neglected to mail the same. He also blames the same clerk for failure to attach to the records of the case complainant's Omnibus Motion dated 21 February 2007. The motion was allegedly attached only on 15 May 2007, thus the belated setting of hearing thereon.[12]

Respondent argues that he has a voluminous workload because he had to divide his attention over his duties as officer-in-charge and as legal researcher I. He claims that in fact, from 16 January 2004 to 26 June 2006, he was compelled, under the direction/ instruction of the judge, to give more attention to voluminous

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[10] *Id*. at 10.

[11] *Id*. at 55-56; Amended comment.

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

legal research work relating to other cases which should be decided before the lapse of the reglementary period, or those cases with pending incidents which needed to be resolved immediately.[13] He opines that the immediate appointment of a court legal researcher I at Branch 38 is urgently needed so that respondent could be relieved of legal research work and fully concentrate in the performance of his duties and responsibilities as clerk of court III.[14]

The Office of the Court Administrator (OCA) has found the complaint meritorious.[15] The OCA observes that on 17 August 2004, the presiding judge had already issued an order submitting the case for decision, and ordered the branch clerk of court to collate all the transcript of stenographic notes (TSN) in preparation for its adjudication. It was thus incumbent upon respondent, who was then acting officer-in-charge, to submit not only the TSNs but also the entire case file to the presiding judge. This, respondent failed to do. The OCA also notes that while respondent acknowledges that the formal offer of evidence had gone missing, he nevertheless tossed the blame to his subordinates. The OCA opines:

> In the instant case, had respondent exercised the required prudence in his tasks, specifically of always monitoring the records of the pending cases in his court, the problem would not have occurred. It is crystal clear that respondent failed to examine the records of the subject criminal case proof of which is the undisputed fact that the Formal Offer of Evidence was not attached thereto. Had the Formal Offer of Evidence been in the records, Judge Lee would have admitted the same as evidence for the complainant in his August 17, 2004 Order. Respondent cannot cite the alleged misfeasance and/or malfeasance of his subordinates to evade administrative liability. Being their supervisor, respondent should have exercised the required diligence in order to secure the safety and proper filing of court documents just like in the subject criminal case.

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[13] *Id*. at 58.

[14] Respondent was promoted to the position of Clerk of Court III on 26 June 2006.

[15] *Id*. at 1-6; Report dated 6 September 2007.

The infraction of herein respondent can be denominated as simple neglect of duty which is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[16]

The OCA has recommended that respondent be found guilty of simple neglect of duty and penalized with suspension from office for two (2) months without pay and other benefits.[17]

We are in accord with the findings and observations of the OCA.

We cannot overemphasize that those charged or connected with the task of dispensing justice carry a heavy burden of responsibility. The clerk of court is the administrative officer of a court and has, *inter alia*, control and supervision over all court records.[18] The Rules of Court charge him with the duty of faithfully keeping the records, papers, files and exhibits in cases pending before his court, as well as the public property committed to his charge, including the library of the court, the seals and furniture belonging to his office.[19] As custodian of the records of the court, it is his duty to ensure that the records are complete and intact. He plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.[20]

When respondent assumed the position of branch clerk of court, it was understood that he was willing, ready and able to do his job with utmost devotion and efficiency. Having a voluminous workload, and being forced to do legal research work are unavailing defenses. Neither can respondent pass the blame to his subordinates. Being the administrative officer and

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

[17] *Id*. at 6.

[18] *Atty. Bandong v. Ching,* 329 Phil. 714, 719 (1996), citing the MANUAL FOR CLERK OF COURT.

[19] RULES OF COURT, Rule 136, Sec. 7.

[20] *Solidbank Corp. v. Capoon, Jr.,* 351 Phil. 936, 942 (1998).

having control and supervision over court records, he should have seen to it that his subordinates performed their functions well.

We find respondent guilty of simple neglect of duty for failure to attach to the records of the case which led to the eventual loss of the prosecution's formal offer of evidence. Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee, thus signifying a "disregard of a duty resulting from carelessness or indifference." It is classified under the Uniform Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.[21]

WHEREFORE, respondent Danver Buena, Clerk of Court III, MeTC of Quezon City, Branch 38 is found *GUILTY* of simple neglect of duty and is hereby *SUSPENDED* from the service for two (2) months, effective immediately, without pay and other benefits which may accrue to him within the given period, with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[21] *Pascual v. Alvarez,* A.M. No. P-04-1882, 30 September 2004, 439 SCRA 545, 552.

SECOND DIVISION

[G.R. No. 143959. February 19, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NORMA BOOC,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; SWINDLING AND OTHER DECEITS; ESTAFA; ELEMENTS OF THE CRIME; PRESENT IN CASE AT BAR. — The elements of estafa under paragraph 2(d), Article 315 of the Revised Penal Code are the following: 1. Postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; 2. Lack of sufficiency of funds to cover the check; and 3. Damage to the payee. All the elements are present in this case. First, Booc issued postdated Allied Bank Check Nos. PA 0844754-55 to obtain money from Fr. Kintanar. Fr. Kintanar would not have exerted efforts to obtain money to loan to Booc unless Booc issued him the postdated checks. Second, when the checks were presented for payment, the bank stated that Booc's account was closed. Repeated oral and written demands upon Booc to make good the checks prior to the filing of the present case did not produce any result. Booc made a partial payment of ₱20,000 to the secretary of Fr. Kintanar's counsel only after the filing of the present case. Booc further claims that there was no deceit on her part when she issued the postdated checks, and Fr. Kintanar was supposed to know that she had no money because she borrowed money from him. Booc's claim is untenable. Booc herself assured Fr. Kintanar that the checks would be good when presented for payment on due date. Finally, there was damage to Fr. Kintanar, who borrowed ₱100,000 to lend to Booc.

2. ID.; ID.; ID.; PROPER PENALTY IMPOSABLE IN CASE AT BAR. — Considering Booc's advanced age and the length of time that the present case has been in our dockets, we set aside *pro hac vice* the procedural infirmities brought about by the erroneous certification and receipt of this case from the Court of Appeals and proceed to pronounce the penalty proper to Booc's crime. Under Article 315 of the Revised Penal Code,

as amended by Presidential Decree No. 818, if the amount of the fraud exceeds ₱22,000, the penalty shall be as follows: *Ist.* 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 not 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*. The amount misappropriated in this case is ₱100,000. The minimum term of Booc's indeterminate sentence, being next lower in degree to that prescribed in the statute, is *prision mayor*. The maximum term of Booc's indeterminate sentence, on the other hand, should be within the maximum period of *reclusion perpetua,* which is 17 years, 4 months and 1 day to 20 years, plus 1 year for each additional ₱10,000. We accordingly modify the penalty imposed by the trial court and impose on Booc the penalty of imprisonment ranging from 6 years and 1 day of *prision mayor* to 24 years, 4 months and 1 day of *reclusion perpetua*.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Angara Abello Concepcion Regala & Cruz Law Offices for appellant.

R E S O L U T I O N

CARPIO, *J.*:

This is an appeal from the Decision[1] dated 7 June 1999 of the Regional Trial Court of Cebu, Branch 58 (trial court) in Criminal Case No. CBU-46304 for estafa. The trial court found accused-appellant Norma Booc (Booc) guilty of estafa and sentenced her to imprisonment of 22 years of *reclusion perpetua* with its accessory penalties, to indemnify the complaining witness ₱80,000, and to pay the costs.

[1] Penned by Judge Jose P. Soberano, Jr.

This case stemmed from Booc's issuance to Msgr. Romualdo Kintanar (Fr. Kintanar) of Allied Bank Check Nos. PA 0844754 and PA 0844755 both dated 26 January 1997 for ₱50,000 each. On 10 December 1997, the prosecution charged Booc with estafa.

The Information against Booc reads as follows:

That in October 1996, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent of gain and by means of false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud, to wit: knowing that she did not have sufficient funds deposited with the Allied Bank, Lapulapu-Cebu Branch, and without informing one Msgr. Romualdo Kintanar of that circumstance, with intent to defraud the latter, did then and there issue, make or draw the following checks, to wit:

CHECK NO.		AMOUNT	DATE
PA 0844754		₱ 50,000.00	January 26, 1997
PA 0844755		₱ 50,000.00	January 26, 1997
	TOTAL	₱ 100,000.00	

in the total amount of ₱ 100,000.00 which were issued in payment of an obligation, but when said checks were presented to the drawee bank for encashment the same were dishonored for reason of "Account Closed" and inspite of repeated demands made upon her to make good the checks she failed and refused, and up to the present time still fails and refuses to do, to the damage and prejudice of Msgr. Romualdo Kintanar in the amount of ₱100,000.00 Philippine Currency.

CONTRARY TO LAW.[2]

The trial court established the following facts:

The prosecution's evidence shows that the private complainant, Msgr. Romualdo Kintanar is the Parish Priest of the Guadalupe Parish Church, Guadalupe, Cebu City. [Booc] was introduced to [Fr. Kintanar]

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[2] *Rollo,* pp. 9-10.

by his two friends and during that meeting [Booc] has shown her interest in helping the Parish. [Fr. Kintanar] was very much impressed by the gesture of [Booc]. About a month thereafter, [Booc] came back and told [Fr. Kintanar] about her financial problem and asked him to help her. As [Booc] was told by [Fr. Kintanar] that he has no money to help her, [Booc] asked him if he could secure a loan for [her] in the amount of ₱100,000.00. [Fr. Kintanar] was assured by [Booc] that there would be no problem about the payment because she has the means to pay the loan on due dates [sic] and [she] promised [Fr. Kintanar] to donate more to the church. To assure further [Fr. Kintanar] of her willingness to pay and means to pay, [Booc] issued to him two (2) postdated checks in the amount of ₱50,000.00 each (Exhs. "A" and "B") and another postdated check of ₱100,000.00 as donation to the church. Hence, [Fr. Kintanar] applied for a loan with the RC Lending Investor in the amount of ₱100,000.00, which was readily granted. The loan was payable for three (3) months at 5% monthly interest or the amount of ₱115,000.00 including the monthly interest for three (3) months. The amount of ₱100,000.00 was in trun [sic] delivered by [Fr. Kintanar] to [Booc].

It appears that the two (2) checks (Exhs. "A" and "B") are both postdated January 26, 1997, the date when the loan matured and when the said checks were presented for payment when due, the same were dishonored for the reason that the account of [Booc] was closed, per debit advise (Exhs. "A-1" and "B-1") with the annotation "Account Closed" (Exh. "A-1-A"). [Booc] was advised or informed about the dishonor of her checks and, despite the extensions given her, [Booc] failed to redeem or make good her checks or to pay the same. And [Fr. Kintanar] was forced to pay his loan with the [sic] RC Lending Investor.

The evidence for the defense is built up by the testimony of [Booc] who has shown her desire to pay [Fr. Kintanar]. [Booc] did not deny her obligation with [sic] Fr. Kintanar and admitted having issued the bouncing checks (Exhs. "A" and "B"). That her failure to pay [Fr. Kintanar] was due to the failure of her two (2) friends to pay her the amount of money they received from her from the proceeds of the loan obtained for her by [Fr. Kintanar]. To show that she did not defraud [Fr. Kintanar], she paid the amount of ₱20,000.00 thru the counsel of [Fr. Kintanar] per Cash Voucher dated July 23, 1998. (Exh. "1")[3]

[3] *Id*. at 19-20.

On 7 June 1999, the trial court rendered a decision convicting Booc of the crime charged, thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused NORMA BOOC guilty beyond reasonable doubt of the offense charged. Accordingly, the said accused is hereby sentenced to suffer the penalty of imprisonment of twenty-two (22) years of *reclusion perpetua* with its accessory penalties, to indemnify the complaining witness the sum of ₱80,000.00 and to pay the costs.
>
> In view of the penalty herein imposed, the accused is hereby ordered restored to the custody of the law, and, in case of appeal, the accused is hereby ordered confined in the National Bureau of Prisons thru the Bagong Buhay Rehabilitation Center (BBRC), Cebu City, pending the resolution of her appeal.
>
> SO ORDERED.[4]

On 24 June 1999, Booc filed a Notice of Appeal appealing the trial court's decision to the Court of Appeals.

On 21 July 2000, the Court of Appeals transmitted the records of Criminal Case No. CBU-46304 to this Court because the penalty imposed upon Booc is *reclusion perpetua*.

This Court, upon receipt of the records of the case, issued a Resolution dated 17 January 2001 requiring the parties to file their briefs. Considering that the records of the case were transmitted by the Court of Appeals to this Court, we directed the Administrator of BBRC to transfer Booc to the Correctional Institution for Women, Mandaluyong City and the Superintendent of the Correctional Institution for Women to confirm Booc's confinement within ten days from the date of receipt.

In our resolution dated 27 March 2001, we noted the letter sent by BBRC's City Jail Warden that Booc is facing charges of Estafa and Violation of BP Blg. 22 in two other courts in Cebu and that it is more practicable that she continue her stay at the BBRC. In the same resolution, we noted the withdrawal of appearance of Atty. Joel Enolpe as counsel for the accused

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[4] *Id*. at 22.

and required Atty. Enolpe to comply with Section 26, Rule 138 of the Rules of Court within ten days from notice.

On 1 March 2002, Booc manifested that she wanted this Court to appoint a counsel *de oficio* for her defense. We appointed Atty. Aleli Angela G. Quirino as Booc's counsel *de oficio* on 27 May 2002. Booc filed her appellant's brief on 11 November 2002.

Booc raises the following issues:

1. Whether the two (2) postdated checks issued by Booc constitutes the efficient cause of the alleged defraudation of Kintanar;
2. Whether the two (2) postdated checks issued by Booc to Kintanar were intended as payment for an obligation contracted prior to or simultaneous with their issuance or merely as security for a pre-existing one;
3. Whether the series of extensions given by Kintanar to Booc, covering a period of nearly seven (7) months, within which she could "settle [her] overdue obligation," and not specifically to make good her checks, effectively converted whatever incipient criminal liability Booc had into merely a civil one;
4. Assuming *arguendo* that Booc is guilty of the crime charged, whether or not the penalty imposed, which is imprisonment for twenty-two (22) years of *reclusion perpetua*, is the proper penalty in view of the Indeterminate Sentence Law; and
5. Whether, in adjudging the civil liability of Booc, the amount of ₱20,000.00 she deposited with Kintanar on 23 July 1998 should be deducted from her outstanding obligation.[5]

We agree with the ruling of the trial court that Booc is guilty of estafa as defined in Article 315, paragraph 2(d) of the Revised Penal Code. In explaining its ruling, the trial court stated:

From the evidence adduced, the Court is of the view that [Fr. Kintanar] was persuaded to part the amount of ₱100,000.00 because

[5] *Id*. at 89-90.

of the issuance by [Booc] of the two (2) postdated checks (Exhs. "A" and "B") and her promise to donate to the Parish the amount of ₱100,000.00. Although this supposed donation was also in postdated check which also bounced, the said bouncing check was not included in the instant charge because, according to [Fr. Kintanar], the said check was intended as a donation. To the mind of the Court, the said supposed donation was made by [Booc] as part of her inducement to [Fr. Kintanar] in order that the latter would help her in her financial problem. These findings find support in the testimony of [Fr. Kintanar], thus:

ATTY. LOPEZ:

Q: What motivated you in order to agree to the request of Norma Booc for loan assistance?

A: I repeat as a trustworthy [sic] that according to her she is very much willing to help the Parish. I really trust her from the very beginning.

Q: What about her capacity to pay the loan?

A: Because of her willingness to give extra donation to the Parish I was impressed that she have [sic] the capacity to pay the loan.
(TSN: page 9, hearing on September 10, 1998)

COURT:

Q: What was that form of assurance that she would pay that loan?

A: She gave me 2 checks she told me that the checks were good.

Q: Would you have borrowed (sic) her that amount without those checks given to you?

A: No way.

Q: What you are trying to tell the Court is that you have parted way [sic] that amount because of her assurance that the checks she gave you were good checks?

A: That's right. (TSN: page 4, hearing on October 14, 1998)

In view of all the foregoing, the Court is of the opinion, as so holds, that [Booc] has committed the crime of Estafa as defined and

penalized in Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, which provides, thus:

> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein were not sufficient to cover the amount of check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

Under the aforequoted legal provisions [sic], the imposable penalty for the offense is reclusion temporal if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, 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 ₱10,000.00 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*.[6]

The elements of estafa under paragraph 2(d), Article 315 of the Revised Penal Code are the following:

1. Postdating or issuance of a check in payment of an obligation contracted at the time the check was issued;
2. Lack of sufficiency of funds to cover the check; and
3. Damage to the payee.[7]

All the elements are present in this case. First, Booc issued postdated Allied Bank Check Nos. PA 0844754-55 to obtain money from Fr. Kintanar. Fr. Kintanar would not have exerted efforts to obtain money to loan to Booc unless Booc issued him the postdated checks. Second, when the checks were presented for payment, the bank stated that Booc's account was closed.

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[6] *Id*. at 20-21.

[7] *People v. Reyes*, G.R. No. 154159, 31 March 2005, 454 SCRA 635.

Repeated oral and written demands upon Booc to make good the checks prior to the filing of the present case did not produce any result. Booc made a partial payment of ₱20,000 to the secretary of Fr. Kintanar's counsel only after the filing of the present case. Booc further claims that there was no deceit on her part when she issued the postdated checks, and Fr. Kintanar was supposed to know that she had no money because she borrowed money from him. Booc's claim is untenable. Booc herself assured Fr. Kintanar that the checks would be good when presented for payment on due date. Finally, there was damage to Fr. Kintanar, who borrowed ₱100,000 to lend to Booc.

Considering Booc's advanced age[8] and the length of time that the present case has been in our dockets, we set aside *pro hac vice* the procedural infirmities brought about by the erroneous certification and receipt of this case from the Court of Appeals[9] and proceed to pronounce the penalty proper to Booc's crime.

Under Article 315 of the Revised Penal Code, as amended by Presidential Decree No. 818, if the amount of the fraud exceeds ₱22,000, the penalty shall be as follows:

Ist. 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

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[8] In a letter dated 22 July 2003 addressed to then Chief Justice Hilario Davide, Jr., Booc stated that she was 70 years old. *Rollo*, pp. 179-180.

[9] According to Section 13, Rule 124 of The Revised Rules of Criminal Procedure, since the trial court imposed the penalty of *reclusion perpetua*, the Court of Appeals should have rendered judgment as the circumstances warrant but refrained from entering judgment, instead of immediately transmitting the records of the present case to this Court. After rendering judgment, the Court of Appeals should have certified the case and elevated the entire record for this Court to review. The necessity of an intermediate review by the Court of Appeals is emphasized by our ruling in *People v. Mateo*, G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640. Considering that the case was elevated to us in 2000, we should have remanded the present case and forwarded all pertinent records thereof to the Court of Appeals after the promulgation of *People v. Mateo* in 2004.

shall not 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.*

The amount misappropriated in this case is ₱100,000. The minimum term of Booc's indeterminate sentence, being next lower in degree to that prescribed in the statute, is *prision mayor*. The maximum term of Booc's indeterminate sentence, on the other hand, should be within the maximum period of *reclusion perpetua*, which is 17 years, 4 months and 1 day to 20 years, plus 1 year for each additional ₱10,000.[10]

We accordingly modify the penalty imposed by the trial court and impose on Booc the penalty of imprisonment ranging from 6 years and 1 day of *prision mayor* to 24 years, 4 months and 1 day of *reclusion perpetua*.

WHEREFORE, we *AFFIRM* the Decision dated 7 June 1999 of Branch 58 of the Regional Trial Court of Cebu City finding Norma Booc *GUILTY* of estafa, with *MODIFICATION*. We impose on Norma Booc an indeterminate penalty of 6 years and 1 day of *prision mayor* to 24 years, 4 months and 1 day of *reclusion perpetua*, and to suffer the accessory penalties of *reclusion perpetua*. We order Norma Booc to pay Msgr. Romualdo Kintanar ₱80,000 as actual damages, and to pay the costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[10] See *Firaza v. People*, G.R. No. 154721, 22 March 2007, 518 SCRA 681. See also *Perez v. People*, G.R. No. 150443, 20 January 2006, 479 SCRA 209 citing *People v. Gabres*, G.R. Nos. 118950-54, 6 February 1997, 267 SCRA 581; *People v. Saley*, 353 Phil. 897 (1998); *Ong v. Court of Appeals*, 449 Phil. 691 (2003).

SECOND DIVISION

[G.R. No. 146031. February 19, 2008]

DELTA DEVELOPMENT & MANAGEMENT SERVICES, INC., (DELTA) BY: RICARDO S. DE LEON, SR., *petitioner, vs.* **THE HOUSING AND LAND USE REGULATORY BOARD,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; CANNOT BE AVAILED OF WHEN THE ORDINARY AND USUAL REMEDIES PROVIDED BY LAW ARE ADEQUATE AND AVAILABLE. — Being an extraordinary remedy, prohibition cannot be resorted to when the ordinary and usual remedies provided by law are adequate and available. Prohibition is granted only where no other remedy is available or sufficient to afford redress. That the petitioner has another and complete remedy at law, through an appeal or otherwise, is generally held sufficient reason for denying the issuance of the writ. Also, a writ of prohibition will not be issued against an inferior court unless the attention of the court whose proceedings are sought to be stayed has been called to the alleged lack or excess of jurisdiction. The foundation of this rule is the respect and consideration due to the lower court and the expediency of preventing unnecessary litigation; it cannot be presumed that the lower court would not properly rule on a jurisdictional objection if it were properly presented to it.

2. ID.; ID.; ID.; PETITIONER HAS A REMEDY OTHER THAN A PETITION FOR PROHIBITION TO ASSAIL THE ALLEGED ILLEGALITY OF THE PROCEEDINGS BEFORE THE HOUSING AND LAND USE REGULATORY AUTHORITY (HLURB); FAILURE TO AVAIL OF THE PROVIDED REMEDY IS FATAL. — Contrary to petitioner's stance, it has a remedy other than a petition for prohibition to assail the alleged illegality of the proceedings before the HLURB. The 1996 HLURB Rules of Procedure, which then governed the quasi-judicial proceedings in the HLURB, provides for a rule on the inhibition and disqualification of an arbiter. Section 3 of Rule IX expressly directs the party alleging partiality

of the arbiter to file with the arbiter his objection in writing stating the grounds therefor; thereafter, the arbiter shall decide the incident. This provision could have properly addressed petitioner's perception that the proceedings before the arbiter were tainted with bias. Petitioner's failure to avail of this remedy is fatal. The records show that petitioner did not bring to the attention of the arbiter the alleged underhanded practice of the HLURB employee so as to give the arbiter the opportunity to assess the same and determine if the proceedings had been compromised. It was not even shown that said HLURB employee was a staff of or worked for the arbiter before whom one of the cases against petitioner was pending. Instead, petitioner took upon itself to decide that the determination of all the other cases filed against it had been affected by the purported irregularity and sweepingly concluded that it would not be able to obtain an impartial hearing before the HLURB.

3. ID.; ID.; ID.; PETITIONER SHOULD NOT BE ALLOWED TO CLAIM THE DENIAL OF ITS RIGHT TO DUE PROCESS BASED SOLELY ON THE ITS PERCEPTION THAT THE HLURB AND THE COMPLAINANTS CONSPIRED IN A SHAM PROCEEDING, WHEN TO BEGIN WITH, IT FAILED TO RAISE THE MATTER BEFORE THE CONCERNED ARBITERS WHO WERE IN A POSITION TO CORRECT THE ALLEGED IRREGULARITY. — Petitioner also asserts that the act of Labapi in preparing the complaints on behalf of the complainants was tantamount to a denial of its right to due process before the HLURB; thus, its failure to exhaust the remedies under the HLURB Rules of Procedure was permissible as an exception to the doctrine of exhaustion of administrative remedies. Petitioner should not be allowed to claim the denial of its right to due process based solely on its perception that the HLURB and the complainants conspired in a sham proceeding when, to begin with, it failed to raise the matter before the concerned arbiters who were in a position to correct the alleged irregularity. On the contrary, petitioner's prayer for the issuance of a writ of injunction to enjoin the HLURB arbiters from hearing the cases against petitioner smacks of an absolute denial of due process as far as the complainants are concerned because it would then foreclose the avenue through which their complaints could be heard.

APPEARANCES OF COUNSEL

Ricardo T. De Leon, Jr. for petitioner.
Raymundo A. Foronda for respondent.

D E C I S I O N

TINGA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing two Resolutions dated 25 July 2000[2] and 7 November 2000[3] of the Court of Appeals in CA-G.R. SP No. 59694 and praying for the issuance of a preliminary injunction and a writ of prohibition to enjoin the Housing and Land Use Regulatory Board (HLURB) from further hearing the complaints against petitioner.

The following factual antecedents appear:

Petitioner is a domestic corporation duly licensed to engage in the real estate development of Delta Homes which is situated in Aniban, Bacoor, Cavite. Respondent HLURB is the government's regulatory body for housing and land development.

On 13 July 1999, Elizabeth Nicolas, one of the buyers of a house and lot at Delta Homes, filed a Complaint[4] against petitioner and Luzon Development Bank before the HLURB. The complaint, docketed as HLURB Case No. RIV-071399-1083, alleged that petitioner violated certain provisions of Presidential Decree No. 957 and Batas Pambansa Blg. 220. Thereafter, six other complaints were separately lodged against petitioner by different lot buyers.

On 18 April 2000, Arbiter Raymundo A. Foronda rendered a decision in HLURB Case No. RIV-071399-1083, the dispositive portion of which reads:

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[1] *Rollo*, pp. 8-16.

[2] *Id.* at 20.

[3] *Id.* at 31.

[4] CA *rollo*, pp. 15-22.

WHEREFORE, premises considered, a decision is hereby rendered as follows:

1. Ordering complainant to pay the amount of ₱191,613.85 representing her balance on the maximum selling price of ₱375,000.00;

2. Upon full payment, ordering Delta to deliver the title in favor of the complainant free from liens and encumbrances;

3. Pay complainant the amount of ₱50,000.00 as and by way of moral damages;

4. Pay complainant ₱50,000.00 as and by way of exemplary damages;

5. Pay complainant ₱10,000.00 as costs of suit;

6. Pay this Board the amount of ₱10,000.00 as administrative fine.

SO ORDERED.[5]

Sometime in May 2000, spouses Luis and Letty Sierra went to respondent's office to verify the complaints against petitioner. They disclosed that a staff/employee of the HLURB, a certain Jun Labapi, admitted that he prepared all the other complaints and documents filed against petitioner and informed them of the cost of the preparation of the complaint. Petitioner, through its treasurer, confronted Labapi about the allegations of spouses Sierra. Although Labapi denied those allegations, he purportedly admitted having prepared the answers on behalf of other buyers named as respondents in a complaint filed against them by another developer.

On 11 July 2000, petitioner filed before the Court of Appeals a Petition for Prohibition[6] against HLURB praying for the issuance of a preliminary injunction and writ of prohibition to enjoin the HLURB from further proceeding with the resolution of the complaints filed by the buyers of Delta Homes against petitioner.

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[5] *Rollo,* pp. 39-40.

[6] CA *rollo,* pp. 2-7.

The petition mainly alleged that the proceedings before the HLURB were not impartial because the HLURB itself was basically representing the interest of the lot buyers as one of its employees prepared the complaints against petitioner on behalf of the lot buyers. It claimed that the HLURB conducted hearings only to render an appearance of validity and impartiality in the proceedings. According to petitioner, the act of HLURB in preparing the complaints of the buyers of Delta Homes deprived petitioner of due process, invalidating the proceedings and any decision of the HLURB.

On 25 July 2000, the Court of Appeals issued the first[7] of the two assailed resolutions dismissing the petition for prohibition on the ground that it violated the doctrine of exhaustion of administrative remedies. The appellate court also noted petitioner's failure to implead the various complainants as respondents and to serve copies of the petition on them.

On 7 November 2000, the Court of Appeals issued the second questioned resolution[8] which denied petitioner's motion for reconsideration.

Hence, the instant petition, raising the following issues:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS CORRECTLY RULED THAT THE INSTANT PETITION IS A VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES;

2. WHETHER OR NOT THE RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN HAVING BEEN INVOLVED IN THE PREPARATION OF THE COMPLAINTS FILED BY THE COMPLAINING BUYERS AGAINST THE PETITIONER.[9]

Petitioner contends that the petition for prohibition before the Court of Appeals was the proper remedy to enjoin the HLURB

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[7] *Supra* note 2.

[8] *Supra* note 3.

[9] *Rollo*, p. 11.

from further conducting what petitioner alleges as irregular and void proceedings of the HLURB. According to petitioner, because the said petition for prohibition did not assail any HLURB decision or resolution on the complaints filed against petitioner but only the proceedings being conducted in relation to those complaints, there was yet nothing to appeal to the HLURB Board of Commissioners, rendering the doctrine of exhaustion of administrative remedies inapplicable.

In its Comment,[10] the HLURB denies petitioner's allegations. It contends that the quasi-judicial hierarchy and appellate procedure in the HLURB ensure that no single person is able to maneuver its proceedings or influence the outcome of any of its decisions. It argues that petitioner was not without any recourse within the HLURB's quasi-judicial machinery to address the alleged maneuvering by Labapi.

The instant petition must be denied.

Being an extraordinary remedy, prohibition cannot be resorted to when the ordinary and usual remedies provided by law are adequate and available. Prohibition is granted only where no other remedy is available or sufficient to afford redress. That the petitioner has another and complete remedy at law, through an appeal or otherwise, is generally held sufficient reason for denying the issuance of the writ.[11]

Also, a writ of prohibition will not be issued against an inferior court unless the attention of the court whose proceedings are sought to be stayed has been called to the alleged lack or excess of jurisdiction. The foundation of this rule is the respect and consideration due to the lower court and the expediency of preventing unnecessary litigation; it cannot be presumed that the lower court would not properly rule on a jurisdictional objection if it were properly presented to it.[12]

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[10] *Id.* at 57-66.

[11] *Esquivel v. Ombudsman*, 437 Phil. 702, 714-715 (2002).

[12] *Esquivel v. Hon. Ombudsman, supra* note 11 at 715.

Contrary to petitioner's stance, it has a remedy other than a petition for prohibition to assail the alleged illegality of the proceedings before the HLURB. The 1996 HLURB Rules of Procedure, which then governed the quasi-judicial proceedings in the HLURB, provides for a rule on the inhibition and disqualification of an arbiter. Section 3 of Rule IX expressly directs the party alleging partiality of the arbiter to file with the arbiter his objection in writing stating the grounds therefor; thereafter, the arbiter shall decide the incident. This provision could have properly addressed petitioner's perception that the proceedings before the arbiter were tainted with bias.

Petitioner's failure to avail of this remedy is fatal. The records show that petitioner did not bring to the attention of the arbiter the alleged underhanded practice of the HLURB employee so as to give the arbiter the opportunity to assess the same and determine if the proceedings had been compromised. It was not even shown that said HLURB employee was a staff of or worked for the arbiter before whom one of the cases against petitioner was pending. Instead, petitioner took upon itself to decide that the determination of all the other cases filed against it had been affected by the purported irregularity and sweepingly concluded that it would not be able to obtain an impartial hearing before the HLURB.

Petitioner also asserts that the act of Labapi in preparing the complaints on behalf of the complainants was tantamount to a denial of its right to due process before the HLURB; thus, its failure to exhaust the remedies under the HLURB Rules of Procedure was permissible as an exception to the doctrine of exhaustion of administrative remedies.

Petitioner should not be allowed to claim the denial of its right to due process based solely on its perception that the HLURB and the complainants conspired in a sham proceeding when, to begin with, it failed to raise the matter before the concerned arbiters who were in a position to correct the alleged irregularity. On the contrary, petitioner's prayer for the issuance of a writ of injunction to enjoin the HLURB arbiters from hearing the cases against petitioner smacks of an absolute denial of due process

as far as the complainants are concerned because it would then foreclose the avenue through which their complaints could be heard.

WHEREFORE, the instant petition is *DENIED* and the resolutions dated 25 July 2000 and 7 November 2000 of the Court of Appeals in CA-G.R. SP No. 59694 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 155850. February 19, 2008]

EDGARDO POSTANES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; FACTUAL AND CREDIBILITY ISSUES ARE NOT APPROPRIATE THEREIN, WHEREIN ONLY QUESTIONS OF LAW MAY BE RAISED. — Petitioner argues that the CA should have acquitted him because the medical certificate/records presented by Mr. Pasion were not also identified by the physician who issued the same; that the findings of the trial court were overrated, and the judge who penned the decision was not the one who personally heard the testimony of petitioner and his three witnesses; that the CA should not have disregarded the testimony of petitioner's witnesses who identified Mr. Pasion as the assailant and

petitioner as the victim; that Mr. Pasion and his witnesses are not credible because they were directly involved in the altercation, and their testimonies are biased and self-serving; and that the CA gravely erred in affirming the conviction of petitioner for lack of proof beyond reasonable doubt. The petition fails. Petitioner raises factual issues and credibility issues, which are not appropriate in a petition for *certiorari* under Rule 45 wherein only questions purely of law may be raised. Petitioner contends that there was an unequal treatment of medical certificates. The record, however, shows that the certificate of Mr. Pasion from the Philippine General Hospital was authenticated by the records custodian who testified, whereas that of petitioner was not authenticated at all.

APPEARANCES OF COUNSEL

Gonzales Batiller Bilog and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari*[1] seeking the nullification of the Decision rendered by the Court of Appeals (CA) on June 25, 2002, and its Resolution, dated October 24, 2002, in CA-G.R. CR No. 24568, entitled "*People of the Philippines v. Edgardo Postanes*." The CA affirmed petitioner's conviction for slight physical injuries.[2]

The facts[3] are:

Two informations (consisting of charge and countercharge) for slight physical injuries were separately filed in court against Remigio Pasion in Criminal Case No. 96-1301, and against petitioner Edgardo Postanes in Criminal Case No. 96-1433. These

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[1] Under Rule 45 of the Rules of Court.

[2] Under Article 266, par. 2 of the Revised Penal Code.

[3] *Rollo*, pp. 34-35.

two cases were consolidated before the Metropolitan Trial Court, Branch 45, Pasay City.

Trial ensued after petitioner and Pasion pleaded not guilty upon arraignment.

In Criminal Case No. 96-1301, petitioner adduced evidence to show the following:

On April 9, 1996, at around three o'clock in the afternoon, petitioner, who was then employed as Security Coordinator of the First Land Link Asia Development Corporation which owns the Masagana City Mall along Taft Avenue, Pasay City, was doing his daily rounds when Pasion, who was then in the company of Gines Carmen, Ali Plaza and Armand Juarbal, without any provocation, uttered the following words to him: "*Kupal, Tang Na Mo*." Pasion then punched petitioner, hitting him on the jaw, near his left eye and other parts of his body. The two engaged in a brief scuffle but eventually stopped when the mall patrons started panicking.

In view of the injuries sustained by petitioner, he was treated at the Philippine General Hospital in Manila. He likewise reported the matter to the police.

In Criminal Case No. 96-1433, Pasion alleged the following:

On April 9, 1996, at past three o'clock in the afternoon, Pasion and his co-employees, Gines Carmen, Ali Plaza and Armand Juarbal, were walking on the 3rd Floor of the Masagana City Mall when all of a sudden, petitioner appeared and tapped him on the shoulder. When he turned around, petitioner punched him on the face. Pasion fell on the floor, and petitioner kicked him and poked a gun at him. Immediately, Pasion ran toward the LRT station.

As a result of the attack, Pasion suffered physical injuries which prevented him from working for ten days. He spent ₱2,000 for his medical expenses. Pasion's testimony was corroborated by Gines Carmen.

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[4] *Records*, p. 44.

On February 29, 2000, the trial court promulgated a Joint Decision.[4] Pasion was acquitted of the crime of slight physical injuries in Criminal Case No. 96-1301. Petitioner, however, was found guilty of slight physical injuries in Criminal Case No. 96-1433, and the court sentenced him to imprisonment for twenty days.

Petitioner appealed the judgment of conviction to the Regional Trial Court (RTC) of Pasay City.

On August 28, 2000, the RTC of Pasay City, Branch 117, rendered a decision[5] affirming petitioner's conviction. Petitioner's motion for reconsideration was denied on October 4, 2000, so he filed a petition for review with the CA.

On June 25, 2002, the CA rendered a Decision[6] dismissing the petition and affirming petitioner's conviction. The pertinent portions of the Decision read:

> [T]he RTC and Metro TC found the testimony of Pasion plausible and credible. These two courts found that it was Postanes who had the motive to attack Pasion.
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> . . . . . .
>
> We have constantly reiterated that conclusions and findings of the facts of the trial court as well as the assessment of the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal when supported by substantial evidence on record.
>
> In rejecting the medical certificate of Postanes and admitting that of Pasion, the RTC and Metro TC ruled that these two documents cannot be placed on equal footing. Pasion's medical certificate was duly authenticated. Thus, even without the corroborating testimony of the issuing doctor on the nature of the injuries he sustained, the certificate was given probative value.
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> . . . . . .

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[5] *Rollo*, p. 51.

[6] *Id*. at 33.

On the other hand, the medical certificate of Postanes was not presented to prove its authenticity. Thus, Postanes' medical certificate cannot be given probative value.

. . . . . .

WHEREFORE, the instant petition is **DISMISSED**. The appealed Decision dated August 28, 2000 and the Order dated October 4, 2000 are hereby **AFFIRMED**.

SO ORDERED.[7]

Petitioner's motion for reconsideration was likewise denied in a Resolution[8] dated October 24, 2002.

Petitioner contends that:

The CA committed grave abuse of discretion, in excess of or amounting to lack of jurisdiction, when it:

a) unfairly discriminated against petitioner when it held inadmissible his medical certificate on the ground that it was not identified by the doctor who issued the same, but at the same time admitting Pasion's medical certificate, leading to petitioner's conviction despite the fact that Mr. Pasion's medical certificate was not also identified by the doctor issuing the same;

b) gave undue credit to the findings of the trial court, in spite of the fact that Honorable Judge Laguilles, who penned the Decision, did not personally hear the testimonies of petitioner and his three witnesses;

c) ignored the clear and convincing testimonies of petitioner's three witnesses who all pointed to Mr. Pasion as the assailant, and petitioner, the victim;

d) preferred to believe the testimonies of Mr. Pasion and his lone witness, Gines Carmen, over the testimonies of petitioner and his three witnesses, in spite of the fact

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[7] *Id*. at 38-39.

[8] *Id*. at 41.

that Messrs. Pasion and Carmen, being in bitter quarrel with petitioner, were demonstrably biased and partial, while no such infirmity existed with petitioner's witnesses; and

e) affirmed the conviction of petitioner.

Petitioner argues that the CA should have acquitted him because the medical certificate/records presented by Mr. Pasion were not also identified by the physician who issued the same; that the findings of the trial court were overrated, and the judge who penned the decision was not the one who personally heard the testimony of petitioner and his three witnesses; that the CA should not have disregarded the testimony of petitioner's witnesses who identified Mr. Pasion as the assailant and petitioner as the victim; that Mr. Pasion and his witnesses are not credible because they were directly involved in the altercation, and their testimonies are biased and self-serving; and that the CA gravely erred in affirming the conviction of petitioner for lack of proof beyond reasonable doubt.

The petition fails. Petitioner raises factual issues and credibility issues, which are not appropriate in a petition for *certiorari* under Rule 45 wherein only questions purely of law may be raised.

Petitioner contends that there was an unequal treatment of medical certificates. The record, however, shows that the certificate of Mr. Pasion from the Philippine General Hospital was authenticated by the records custodian who testified, whereas that of petitioner was not authenticated at all.

WHEREFORE, the petition is *DENIED* and the Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 24568 dated June 25, 2002 and October 24, 2002, respectively, are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Leonardo-de Castro, JJ.*, concur.

FIRST DIVISION

[G.R. No. 156224. February 19, 2008]

HEIRS OF PANFILO F. ABALOS,[1] *petitioners, vs.* **AURORA A. BUCAL, DEMETRIO BUCAL, ARTEMIO F. ABALOS, LIGAYA U. ABALOS, ROMULO F. ABALOS, JESUSA O. ABALOS, MAURO F. ABALOS and LUZVIMINDA R. ABALOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF JUDGMENTS; *RES JUDICATA*; REQUISITES. — *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. For the preclusive effect of *res judicata* to be enforced, however, the following requisites must be present: (1) the judgment or order sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the first case must be a judgment on the merits; and (4) there must be between the first and second action, identity of parties, subject matter and causes of action.

2. ID.; ID.; ID.; ELEMENT OF IDENTITY OF PARTIES IS CLEARLY WANTING IN CASE AT BAR; THE FATHER OF PETITIONERS, SHOULD HAVE IMPLEADED RESPONDENTS WHEN HE FILED CIVIL CASE NO. 15465 SINCE AT THAT TIME, THE LATTER WERE ALREADY CLAIMING OWNERSHIP OVER THE SUBJECT

[1] The original petitioner in this case was Panfilo F. Abalos. After his death on April 23, 2003, he was substituted, with prior leave of court, by his children, namely: Florentina Abalos-Castro, Rustica Abalos-Ricardo, Magdalina Abalos-Garcia, Wilfredo Abalos and Vila Abalos-Buada (*rollo*, pp. 178-183).

FISHPONDS, WHICH WERE TRANSFERRED IN THEIR NAMES PRIOR TO THE COMMENCEMENT OF THE CASE. — In the instant case, the fourth requisite, in particular the identity of parties, is clearly wanting. As found by the CA, this Court, through our earlier resolution in G.R. No. 77965, already settled that *res judicata* does not apply in this case. In G.R. No. 77965, which Panfilo instituted to challenge the propriety of the writ of preliminary injunction issued by the trial court, this Court agreed with the CA's disposition that respondents are considered as third persons with respect to Civil Case No. 15465 since they were not impleaded as defendants therein. This Court held as in accordance with law and jurisprudence the CA's opinion that all those who did not in any way participate or intervene in the partition case are considered third persons within the contemplation of Article 499 of the Civil Code. The foregoing rule still stands. Indeed, Panfilo, the father of petitioners, should have impleaded respondents when he filed Civil Case No. 15465 since at that time the latter were already claiming ownership over the subject fishponds, which were transferred in their names prior to the commencement of the case. Petitioners cannot shift to respondents the burden of joining the case because they are not duty bound to intervene therein and they have every right to institute an independent action: *First*, intervention is not compulsory or mandatory but merely optional and permissive; and *Second*, as the persons who are in actual possession of the fishponds they claim to own, respondents may wait until their possession are in fact disturbed before taking steps to vindicate their rights. Understandably, at the time of the institution and pendency of Civil Case No. 15465, respondents still had no definite idea as to how the very nature of the partition case could actually affect their possession. On the other hand, Panfilo had personal knowledge that respondents acquired ownership of the properties prior to the filing of Civil Case No. 15465, that they are in actual possession thereof, and that they have declared the lands in their names for taxation purposes. Panfilo could not be ignorant of these because he resided in the same locality where the properties are found. Quite startling, however, is that he did not bother to implead respondents in the partition case despite all these and the fact that the defendants therein raised the point that Faustino was not the owner of some of the lands in question and that they belong

to others not parties to the case. As his successors-in-interest, petitioners must suffer from Panfilo's evident omission.

3. ID.; ID.; ID.; IN AN ACTION FOR PARTITION, ALL OTHER PERSONS INTERESTED IN THE PROPERTY SHALL BE JOINED AS DEFENDANTS; NOT ONLY CO-HEIRS BUT ALSO ALL PERSONS CLAIMING INTEREST OR RIGHTS IN THE PROPERTY SUBJECT OF PARTITION ARE INDISPENSABLE PARTIES. — Even if *res judicata* requires not absolute but substantial identity of parties, still there exists substantial identity only when the "additional" party acts **in the same capacity or is in privity** with the parties in the former action. In this case, while it is true that respondents are legitimate children and relatives by affinity of Faustino it is more important to remember that, as shown by their documents of acquisition, they became owners of the subject fishponds not through Faustino alone but also from a third person (*i.e.*, Maria Abalos). Respondents are asserting their own rights and interests which are distinct and separate from those of Faustino's claim as a hereditary heir of Francisco Abalos. Hence, they cannot be considered as privies to the judgment rendered in Civil Case No. 15465. Unfortunately for petitioners, they relied solely on their untenable defense of *res judicata* instead of contesting the genuineness and due execution of respondents' documentary evidence. Moreover, Panfilo erred in repeatedly believing that there was no necessity to implead respondents as defendants in Civil Case No. 15465 since, according to him, the necessary parties in a partition case are only the co-owners or co-partners in the inheritance of Francisco Abalos. On the contrary, the Rules of Court provides that in an action for partition, all other persons interested in the property shall be joined as defendants. Not only the co-heirs but also all persons claiming interests or rights in the property subject of partition are indispensable parties. In the instant case, it is the responsibility of Panfilo as plaintiff in Civil Case No. 15465 to implead all indispensable parties, that is, not only Faustino and Danilo but also respondents in their capacity as vendees and donees of the subject fishponds. Without their presence in the suit the judgment of the court cannot attain real finality against them. Being strangers to the first case, they are not bound by the decision rendered therein; otherwise, they would be deprived of their constitutional right to due process.

4. ID.; ID.; ID.; ONLY PROPERTIES OWNED IN COMMON MAY BE THE SUBJECT OF AN ACTION FOR PARTITION; SINCE THE SHARES IN THE LOTS IN QUESTION WERE VALIDLY DISPOSED OF IN FAVOR OF RESPONDENTS, THEY MUST BE EXCLUDED THEREFROM. — It must be stressed that in a complaint for partition, the plaintiff seeks, *first*, a declaration that he is a co-owner of the subject properties; and *second*, the conveyance of his lawful shares. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. *Reyes-de Leon v. Del Rosario* held: The issue of ownership or co-ownership, to be more precise, must first be resolved in order to effect a partition of properties. This should be done in the action for partition itself. As held in the case of *Catapusan v. Court of Appeals*: 'In actions for partition, the court cannot properly issue an order to divide the property unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition. Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his complaint the 'nature and the extent of his title' to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties. x x x' It is only properties owned in common that may be the object of an action for partition; it will not lie if the claimant has no rightful interest over the subject property. Thus, in this case, only the shares in the lots which are determined to have been co-owned by Panfilo, Faustino and Danilo could be included in the order of partition and, conversely, shares in the lots which were validly disposed of in favor of respondents must be excluded therefrom. In this connection, the Court sees no reason to depart from the findings of fact and the partition ordered by the appellate court as these are amply supported by evidence on record. Furthermore, the rule is that factual issues are beyond our jurisdiction to resolve since in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure this Court's power is limited only to review questions of law — when there is doubt or difference as to what the law is on a certain state of facts.

APPEARANCES OF COUNSEL

Perpetuo G. Paner for petitioners.
Tanopo & Serafica Cosme for respondents.

D E C I S I O N

AZCUNA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules on Civil Procedure assails the August 31, 2001 Decision[2] and November 20, 2002 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 39138, which affirmed with modification the May 25, 1992 Decision[4] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, in Civil Case No. 16289.

Prologue

On October 30, 1978, petitioners' father, Panfilo Abalos, filed before the RTC of Lingayen, Pangasinan, a complaint[5] docketed as **Civil Case No. 15465** for *Partition, Annulment of Certain Documents, Accounting and Damages* against Faustino Abalos, his brother, and Danilo Abalos, his nephew and the only surviving heir of his brother Pedro Abalos. In the amended complaint,[6] Panfilo alleged that their father/grandfather, Francisco Abalos, died intestate and was survived by his wife, Teodorica, and their children, namely: Maria, Faustino, Pedro, Roman and Panfilo; that at the time of his death, Francisco left the following real properties:

x x x x x x x x x

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[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices B.A. Adefuin-De la Cruz and Mercedes Gozo-Dadole, concurring.

[3] *Rollo*, p. 58.

[4] Penned by Judge Eugenio G. Ramos.

[5] Evidence Folder for the Petitioners, pp. 1-5.

[6] *Rollo*, pp. 59-65.

a.) A parcel of residential land situated in Linoc, Binmaley, Pangasinan, containing an area of 1,020 sq. meters, bounded on the North by Leoncio Dalmacio; On the East by Dimas Perez; On the South by Callejon; And on the West by Magno Dalmacio; declared under Tax Declaration No. 121 in the name of Francisco Abalos and assessed at ₱255.50; [n]ot registered under Act 496 [or] under the Spanish [M]ortgaged Law[;]

b.) A parcel of unirrigated riceland situated in Linoc, Binmaley, Pangasinan, containing an area of 841 sq. meters, bounded on the North by Callejon; On the South by Roberto Aquino; On the East by Eulalio Javier; And on the West by Hipolito Perez. It is originally covered by Tax Declaration in the name of Francisco Abalos now covered by Tax Declaration No. 14457 in the name of Faustino Abalos and assessed at ₱20.00[;] [n]ot registered under Act 496 [or] under the Spanish [M]ortgaged Law;

c.) A parcel of unirrigated riceland situated in Linoc, Binmaley, Pangasinan, containing an area of 1,196 sq. meters, bounded on the North by Callejon; On the East by Estanislao Ferrer; On the South by Saturnino Aquino; And on the West by Hipolito Perez[.] It is originally declared in the name of Francisco Abalos and now covered by Tax Declaration No. 14458 in the name of Faustino Abalos and assessed at ₱30.00;

d.) A parcel of fishpond situated in Linoc, Binmaley, Pangasinan, containing an area of 1,158 sq. meters, bounded on the North by Doyao River; On the East by Hipolito Perez; On the South by Leoncio Dalmacio; And on the West by Teodoro Abalos. It is originally declared in the [name] of Francisco Abalos and now covered by Tax Declaration No. 21592 in the name of Faustino Abalos and assessed at ₱370.00;

e.) A parcel of fishpond situated in Linoc, Binmaley, Pangasinan, containing an area of 1,158 sq. meters, bounded on the North by Leoncio Dalmacio; On the East by Teodoro Abalos; On the South by Leoncio Dalmacio; And on the West by Evaristo Dalmacio. It is originally declared in the name of Francisco Abalos and now covered by Tax Declaration No. 21591 in the name of Faustino Abalos and assessed at ₱370.00;

f.) A parcel of unirrigated riceland situated in Linoc, Binmaley, Pangasinan, containing an area of 950 sq. meters[,] bounded

on the North by Liberato Gonzalo; On the East by Severina Catalan; On the South by Severina Catalan; And on the West by Barrio Road of Linoc[;] [d]eclared under Tax Declaration No. 124 in the [name] of Francisco Abalos and [a]ssessed at ₱20.00;

g.) A parcel of fishpond situated in Canaoalan, Binmaley, Pangasinan, containing an area of 2,480 sq. meters, bounded on the North by Francisco Deogracias; On the East by a Path; On the South by Ponciano Cayabyab; And on the West by Ponciano Cayabyab[;] [d]eclared under Tax Declaration No. 122 in the name of Francisco Abalos and assessed at ₱70.00;

h.) A parcel of fishpond situated in Canaoalan, Binmaley, Pangasinan, containing an area of 1,585 sq. meters, bounded on the North by Adriano Gonzalo; On the East by Florencio Perez; On the South by Pioquinto Ferrer; And on the West by Pator Terrado[;] [d]eclared under Tax Declaration No. 123 in the name of Francisco Abalos and assessed at ₱60.00;

i.) A parcel of little fishpond adjoining and North of the land described in paragraph 4 sub-paragraph (a) of this complaint whose Tax Declaration could not be produced by the plaintiff;[7]

x x x x x x x x x

that said properties were administered by Teodorica; that following their mother's death, there was a verbal agreement among Faustino, Pedro and Panfilo that Faustino would administer all the properties left by their parents except those given by Teodorica to each of the siblings as their partial advance inheritance; that taking undue advantage of his position and in clear breach of the trust and confidence reposed on him, Faustino, by means of fraud and machination, took possession of the properties given to Maria and Roman upon their death and transferred some of the administered properties in his name and/or in the name of his heirs or disposed of them in favor of third parties; that since his administration of the properties, Faustino has not

[7] Evidence Folder for the Petitioners, pp. 1-3.

made any accounting of the produce, appropriating them almost to himself; and that Panfilo repeatedly demanded the partition of the properties but Faustino refused to do so despite earnest efforts towards amicable settlement.

After Panfilo rested his case and following the postponements at the instance of defendants, the trial court, upon motion, declared that Faustino and Danilo were deemed to have waived their right to present evidence.[8] On February 21, 1984, RTC Branch 37 of Lingayen, Pangasinan, rendered its Decision,[9] the dispositive portion of which stated:

> WHEREFORE, judgment is hereby rendered ordering:
>
> i. the partition of the intestate estate of the deceased Francisco Abalos in the following manner
>
> a. to the plaintiff, Panfilo Abalos, is the fishpond, Parcel D referred to as "Duyao"; and ½ of fishpond, Parcel H referred to as "Pinirat" plus his advance inheritance, Parcel F referred to as "Manga";
>
> b. to defendant, Faustino Abalos, is the residential land where his house stands and parcels A to I, plus his advance inheritance, Parcels [B] and C;
>
> c. to defendant, Danilo Abalos, is that fishpond, parcel E referred to as "Emong," and the ½ portion of the fishpond, Parcel H referred to as "Pinirat" and his advance inheritance of his father Pedro Abalos, Parcel G.
>
> ii. the defendant Faustino Abalos to reimburse to plaintiff the total amount of ₱19,580.00, Philippine Currency, as plaintiff's lawful share from 1944;
>
> iii. the annulment of all documents and/or instruments which transferred said properties and are considered inconsistent with the above partition;
>
> iv. the dismissal of defendants' counterclaim;

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[8] *Id.* at 10.

[9] *Id.* at 6-11.

v. the defendants to pay the costs of the suit.

SO ORDERED.[10]

Despite the filing of a notice of appeal beyond the reglementary period, the trial court still gave due course to the appeal of Faustino and Danilo; thus, Panfilo filed a petition for *certiorari* before this Court, which subsequently referred the case to the Intermediate Appellate Court (IAC, now the Court of Appeals).[11] The IAC granted the petition and denied the motion for reconsideration.[12] On October 30, 1985, this Court affirmed the Decision.[13] Upon the issuance of an entry of judgment on November 4, 1985, the IAC ordered the remand of the case to the RTC.[14] Thereafter, on December 11, 1985, the trial court issued a writ of execution in favor of Panfilo.[15]

The Case

The instant case arose when petitioners' father, Panfilo, began to execute the Decision in Civil Case No. 15465. In opposition, respondents, who are children and in-laws of the now deceased Faustino, filed on January 8, 1986 a case for *Quieting of Title, Possession, Annulment of Document and Damages with Preliminary Injunction*.[16] Docketed as **Civil Case No. 16289**, the complaint alleged, among others, that:

x x x x x x x x x

III

Plaintiffs are the absolute owners and in actual possession of the following parcels of land more particularly described, to wit:

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

[11] *Rollo*, p. 113.

[12] *Id.* at 114-121.

[13] *Records*, p. 54.

[14] *Id.* at 249.

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

[16] *Id.* at 1-12.

(a.) A parcel of land (fishpond) with an approximate area of 289.5 square meters, more or less, located at Linoc, Binmaley, Pangasinan. Bounded on the North by the Duyao River; on the East by Faustino Abalos before, now Romulo Abalos; on the South by Leoncio Dalmacio; and on the West by Romulo Abalos. Declared in the name of Aurora A. Bucal under Tax [Dec.] No. 1568 of the current land records of Binmaley, Pangasinan; assessed value — ₱150.00;

(b.) A parcel of riceland located at Linoc, Binmaley, Pangasinan, containing an area of 1,196 square meters, more or less. Bounded on the North by Callejon; on the East by Estanislao Ferrer; on the South by Saturnino Aquino; and on the West by Hipolito Ferrer. Declared in the names of Artemio F. Abalos and Mauro F. Abalos under Tax [Dec.] No. 1007 of the land records of Binmaley, Pangasinan; assessed value — ₱260.00;

(c.) A parcel of residential land located at Linoc, Binmaley, Pangasinan, with an area of 1,029 square meters, more or less. Bounded on the North by Leoncio Dalmacio; on the East by Dimas Perez; on the South by Callejon; and on the West by Magno Dalmacio. Declared in the name of Romulo F. Abalos under Tax [Dec.] No. 35 of the current land records of Binmaley, Pangasinan; assessed value — ₱6,120.00;

(d.) A portion of fishpond located at Linoc, Binmaley, Pangasinan, with an area of 289.5 square meters, more or less. Bounded on the North by the Duyao River; on the East by Faustino Abalos; on the South by Leoncio Dalmacio; and on the West by Teodoro Abalos. Declared in the name of Romulo F. Abalos under Tax [Dec.] No. 33 of the current land records of Binmaley, Pangasinan; assessed value — ₱180.00;

(e.) A portion (eastern) of fishpond located at Linoc, Binmaley, Pangasinan, with an area of 579 square meters, more or less. Bounded on the North by Leoncio Dalmacio; on the East by Teodoro Abalos; on the South by Leoncio Abalos; and on the West by Evaristo Dalmacio. Declared in the names of Artemio F. Abalos and Mauro F. Abalos under Tax [Dec.] No. 1009 of the land records of Binmaley, Pangasinan; assessed value — ₱340.00;

(f.) A parcel of fishpond located at Canaoalan, Binmaley, Pangasinan, with an area of 1,506 square meters, more or less. Bounded on the North by Adriano Gonzalo; on the East by Florencio Perez; on the South by Pioquinto Ferrer; and on the West by Pastor

Terrado. Declared in the names of Romulo F. Abalos and Mauro F. Abalos under Tax [Dec.] No. 1314 of the land records of Binmaley, Pangasinan; assessed value — ₱970.00;

IV

Parcel (a) above-described belongs in absolute ownership to spouses Aurora A. Bucal and Demetrio Bucal who are in actual possession thereof as such, having acquired the same by absolute sale from Romulo F. Abalos who in turn bought the same from Maria Abalos; that the latter in turn acquired the same by inheritance from her deceased parents, Francisco Abalos and Teodorica Ferrer, who died on May 4, 1928 and June 2, 1945, respectively. A copy of the sale from Maria Abalos to Romulo F. Abalos is hereto attached as ANNEX "A" while the sale by Romulo F. Abalos to Aurora A. Bucal is hereto attached as ANNEX "B". A copy of Tax [Dec.] No. 1568 covering said land is hereto attached as ANNEX "C";

V

Parcel (b) above-described belongs in absolute common ownership to the spouses Artemio F. Abalos and Ligaya U. Abalos and spouses Mauro F. Abalos and Luzviminda R. Abalos who acquired the same by absolute sale in 1978 from Faustino Abalos as shown by a deed a copy of which is hereto attached as ANNEX "D"; that the latter acquired the same by absolute sale from Bernardo Victorio in 1914, and that Faustino Abalos donated the same in consideration of his marriage with Teodora Ferrer as shown by a deed a copy of which is hereto attached as ANNEX "E". A copy of Tax [Dec.] No. 1007 is hereto attached as ANNEX "F";

VI

Parcel (c) above-described belongs in absolute ownership to the spouses Romulo F. Abalos and Jesusa O. Abalos and are in actual possession as such having acquired the same by absolute sale from Aurora A. Bucal as shown by a deed a copy of which is hereto attached as ANNEX "G"; that Aurora A. Bucal in turn bought the same from Maria Abalos as shown by a deed a copy of which is hereto attached as ANNEX "H"; and that Maria Abalos inherited the same land from her deceased parents;

VII

Parcel (d) above-described belongs in absolute ownership to spouses Romulo F. Abalos and Jesusa O. Abalos having acquired

the same in 1978 by means of a deed of quitclaim and renunciation of rights a copy of which is hereto attached as ANNEX "I"; that Romulo F. Abalos declared the same for taxation purposes as shown by Tax [Dec.] No. 33 a copy of which is hereto attached as ANNEX "J";

VIII

Parcel (e) above-described belongs in common absolute ownership to the spouses Artemio F. Abalos and Ligaya U. Abalos and spouses Mauro F. Abalos and Luzviminda R. Abalos having acquired the same from Maria Abalos as shown by two (2) documents copies of which are hereto attached as ANNEXES "K" and "L"; that Faustino and Maria bought the same from Genoveva Perez as shown by a deed a copy of which is hereto attached as ANNEX "M"; that Genoveva Perez in turn bought the same from Teodoro Abalos as shown by a deed a copy of which is hereto attached as ANNEX "N"; that Mauro F. Abalos and Artemio F. Abalos have declared the land in their names for taxation purposes as shown by Tax [Dec.] No. 1009 a copy of which is hereto attached as ANNEX "O";

IX

Parcel (f) above-described belongs in absolute common ownership to spouses Romulo F. Abalos and Jesusa O. Abalos and spouses Mauro F. Abalos and Luzviminda R. Abalos and are in actual possession as such having acquired the same by absolute sale in 1978 as shown by a deed a copy of which is hereto attached as ANNEX "P"; that Faustino in turn inherited the same from his deceased parents; and that the present owners have declared the same for taxation purposes as shown by Tax [Dec.] No. 1314 a copy of which is hereto attached as ANNEX "Q";

X

The possession of the present owners as well as their predecessors-in-interest have always been in good faith, peaceful, public, exclusive, adverse, continuous and in the concept of absolute owners since their respective acquisition [up to] the present without question from anyone, much less from the defendant herein. Said owners have likewise religiously paid the taxes due on the lands [up to] the current year;[17]

x x x x x x x x x

[17] *Id.* at 2-6.

Respondents claimed that on two separate occasions in December 1985 Panfilo sought to execute the decision by attempting to take possession of the lands in question through the use of force, threat, violence and intimidation. In addition, to satisfy the damages awarded to Panfilo, the deputy sheriff also levied upon parcels (b) and (c) above-described for the purpose of selling the same at public auction, in regard to which they also filed their respective notice of third-party claim. Respondents argued that to compel them to abide by the writ of execution and notice of levy issued by the court in Civil Case No. 15465 would amount to deprivation of property without due process of law because the decision rendered in said case is not binding upon them as they were not made parties thereto and they became owners thereof prior to the institution of the case.

On January 8, 1986, the trial court directed the parties to maintain the *status quo* pending the resolution on the motion for the issuance of the writ of preliminary injunction.[18]

In the Objection to the Issuance of Writ of Preliminary Injunction,[19] Answer,[20] and Memorandum of Authorities[21] filed by Panfilo, he stressed that the title, right or interest of respondents with respect to the fishponds mentioned in sub-paragraphs (a), (d), and (f) of paragraph III of the Complaint had already been declared null and void in Civil Case No. 15465 by a co-equal and competent court and affirmed with finality by this Court. It was averred that respondents were never in possession of the fishponds as he was the one peacefully placed in its possession by the deputy sheriff. For failing to intervene in Civil Case No. 15465, Panfilo asserted that respondents are now barred by the principles of *res judicata* and estoppel *in pais*.

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[18] *Id*. at 46.

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

[20] *Id.* at 57-63.

[21] *Id.* at 66-67.

On July 21, 1986, however, the trial court ordered the issuance of a writ of preliminary injunction.[22] Concurring with the position of respondents, it held that the principle of *res judicata* does not apply since there is no identity of parties, subject matter, and causes of action between Civil Case No. 15465 and the present case. In Civil Case No. 15465, the parties are Panfilo, as plaintiff, and Faustino Abalos and Danilo Abalos, as defendants, while in the present case, the parties are the children of Faustino Abalos and their respective spouses, as plaintiffs, and Panfilo, as defendant; in the former, the principal action is for partition while in the latter, the suit is for quieting of title, possession, annulment of document and damages. The trial court opined that while it is true that respondents Aurora, Artemio, Romulo, and Mauro are legitimate children and compulsory heirs of Faustino Abalos, the documents showing their acquisition of the properties in question revealed that they became owners thereof not through their father alone but also by way of third persons who were not parties in Civil Case No. 15465. Moreover, they acquired their ownership prior to the institution of said case.

Assailing the aforesaid Order, Panfilo filed a petition for *certiorari* before this Court. In a Resolution, the petition was referred to the CA, which later dismissed the same for lack of merit.[23] The CA ruled that, for not being impleaded as parties, respondents are considered as "third persons" in Civil Case No. 15465 since they did not in any way participate or intervene in the partition. Neither did the trial court violate the principle that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power. The CA viewed that the writ of execution was issued for the specific purpose of levying upon the properties of Faustino Abalos, not that of respondents, as the judgment debtor in Civil Case No. 15465.

On December 16, 1987, this Court, in G.R. No. 77965 entitled *"Panfilo Abalos v. Aurora Bucal, et al. and Court of Appeals,"*

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[22] *Id.* at 142-146.

[23] *Id.* at 162, 323-331.

affirmed the CA decision, which resolution became final and executory on August 2, 1988.[24]

Upon motion of respondents, the trial court ordered the issuance of an *alias* writ of preliminary injunction on March 14, 1989.[25] Again, Panfilo challenged the order *via* petition for *certiorari* with prohibition before the CA but the same was denied.[26] When the incident was elevated to this Court, it was dismissed on November 15, 1989. The resolution became final and executory on February 9, 1990.[27]

Meanwhile, in the proceedings before the trial court, Panfilo and respondents submitted their respective pre-trial briefs.[28] On October 23, 1989, the trial court issued the Pre-trial Order.[29] Taking into account the admissions made by the parties, particularly the fact that Panfilo claimed proprietary rights only with respect to parcels (a), (d) and (f) mentioned in the complaint, the court delimited the issues for resolution as follows:

> The factual issues are: (1) With respect to parcels A, D, and F, whether or not the plaintiffs claiming ownership and possession over said parcels are the lawful owners and possessors thereof by virtue of genuine and duly executed documents of sale, quitclaim and renunciation of rights; (2) Whether or not plaintiffs' predecessors-in-interest were the lawful owners and possessors of parcels A, D and F; (3) Whether or not Faustino Abalos and his wife [Teodorica] Ferrer were awarded the properties subject of partition proceedings in Civil Case No. 15465; (4) Whether or not by virtue of the decision rendered in that partition proceedings, the fishpond referred to as Duyao which is parcel A, D and F was awarded; (5) Whether or not pursuant to the decision of the Supreme Court in appealed case No. 713355 the defendant Panfilo Abalos was placed in possession by the Deputy Sheriff Romulo Jimenez duly assisted by the members

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[24] *Id.* at 321.

[25] *Id.* at 333-336, 383.

[26] *Id.* at 452-465, 501-503, 537.

[27] *Id.* at 651-652.

[28] *Id.* at 407-410, 439-443.

[29] *Id.* at 555-559.

of the police force of Binmaley, sometime on or about the last part of December 1985.

The legal issues are: (1) Whether or not the decision in Civil Case No. 15465 entitled "Panfilo Abalos versus Faustino Abalos["] is binding upon the plaintiffs who were not impleaded as party litigants either as plaintiffs or defendants; (2) What is the legal basis of the plaintiffs to file action to quiet title against the defendant?[30]

Likewise, in the course of the trial and in their respective memoranda,[31] the parties admitted that parcels (a) and (d) are portions of a fishpond locally known as *Duyao*[32] and are parts of parcel (d) stated in the Complaint of Civil Case No. 15465, which was to be held in common *pro-indiviso* by the heirs of Francisco Abalos.

Thus, the controversy was narrowed down to only two (2) properties, namely: the fishpond located at Linoc, Binmaley, Pangasinan, locally known as *Duyao*, and the fishpond located at Canaoalan, Binmaley, Pangasinan, locally known as *Pinirat*.

On May 25, 1992, RTC Branch 39 of Lingayen, Pangasinan, rendered its Decision,[33] ordering thus:

WHEREFORE, judgment is hereby rendered declaring:

1. That the plaintiffs-spouses Aurora Bucal and Demetrio Bucal are the absolute owners of one-fourth (¼) portion *pro-indiviso* of that fishpond which is locally known as Duyao;

2. That the defendant Panfilo Abalos is the absolute owner of three-fourth (¾) portion *pro-indiviso* of that fishpond locally known as "Duyao";

3. That the plaintiffs have no right whatsoever over the fishpond locally known as "*Pinirat*" and confirming the adjudication thereof in Civil Case No. 15465; [and]

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[30] *Id.* at 558.

[31] *Id.* at 750-770, 775-812.

[32] Also spelled as "Doyao" in the records.

[33] *Records*, pp. 813-819.

4. No award of damages, and no costs.

SO ORDERED.[34]

The trial court made the following factual findings: that the original owners of the two fishponds were spouses Francisco Abalos and Teodorica Ferrer, who died on May 4, 1928 and June 2, 1945, respectively; that the spouses had five (5) children, namely: (a) Maria, who died single on March 20, 1972; (b) Roman, who died single on June 10, 1944; (c) Panfilo, petitioner herein; (d) Pedro, who died on May 11, 1971 and was survived by his only child, Danilo; and (e) Faustino, whose children Aurora, Artemio, Romulo and Mauro are among the respondents herein; that Roman predeceased his mother, hence, when the latter died only four of the siblings inherited the *Duyao*, becoming its *pro-indiviso* co-owners; that on November 11, 1968, Maria sold her ¼ share to Romulo, who, in turn, sold the same to Aurora; that in view of the sale, the said portion of the *Duyao* should have been excluded from the Decision in Civil Case No. 15465 for the reason that said case refers to the partition of the estate only of spouses Francisco and Teodorica; that Romulo is not the owner the other ¼ portion of the *Duyao* for failure to establish his ownership thereon and also considering that it could have been the same ¼ portion that he sold to Aurora; and that the Decision in Civil Case No. 15465 has *res judicata* effect with respect to the *Pinirat* since the deed of sale executed by Faustino in favor of Romulo and Mauro was simulated and employed merely to defraud the other heirs.

Both Panfilo and respondents elevated the case to the CA, assigning the alleged errors of the trial court:

As to Panfilo —

1. THE LOWER COURT ERRED IN ADJUDICATING ONE-FOURTH PORTION OF THE FISHPOND KNOWN AS "*DUYAO*" TO PLAINTIFFS DEMETRIO BUCAL AND AURORA ABALOS- BUCAL, NOTWITHSTANDING THAT SAID ENTIRE FISHPOND WAS AWARDED TO

[34] *Id.* at 819.

DEFENDANT PANFILO ABALOS IN CIVIL CASE NO. 15465, ENTITLED "*PANFILO ABALOS VS. FAUSTINO ABALOS & DANILO ABALOS*."

2. THE LOWER COURT ERRED IN ADJUDICATING ONE-FOURTH PORTION OF THE FISHPOND KNOWN AS "*DUYAO*" TO PLAINTIFFS DEMETRIO BUCAL AND AURORA ABALOS-BUCAL, AS ALLEGED INHERITANCE OF MARIA ABALOS FROM HER LATE PARENTS, NOTWITHSTANDING THAT MARIA ABALOS ALREADY INHERITED FROM HER LATE PARENTS THE PARCEL OF RESIDENTIAL LAND DESCRIBED AS PARCEL (C) IN PLAINTIFF'S COMPLAINT.

3. THE LOWER COURT ERRED IN ADJUDICATING ONE-FOURTH PORTION OF THE FISHPOND KNOWN AS "*DUYAO*" TO PLAINTIFFS DEMETRIO BUCAL AND AURORA ABALOS-BUCAL, NOTWITHSTANDING THAT THE FINAL DECISION IN CIVIL CASE [15465] EXPRESSLY ANNULLED ALL DOCUMENTS AND INSTRUMENTS WHICH TRANSFERRED SAID PROPERTIES AND ARE CONSIDERED INCONSISTENT WITH THE PARTITION ORDERED IN SAID CIVIL CASE.

4. THE LOWER COURT ERRED IN NOT TREATING THE PLAINTIFFS AS IN ESTOPPEL.

5. THE LOWER COURT HAD NO JURISDICTION OVER THE SUBJECT MATTER OF THE PRESENT CASE.[35]

As to respondents —

1. THE TRIAL COURT ERRED IN NOT FINDING THAT THE LATE SPOUSES FRANCISCO ABALOS AND TEODORICA FERRER LEFT AN INTESTATE ESTATE CONSISTING OF FIVE PARCELS OF LAND ONLY.

2. THE TRIAL COURT ERRED IN NOT FINDING THAT ONE-FOURTH *PRO INDIVISO* OF THE LAND KNOWN AS ["*DUYAO*"] WAS THE SHARE OF FAUSTINO ABALOS, WHICH HE QUITCLAIMED IN FAVOR OF HIS SON ROMULO ABALOS, AND IN APPLYING *RES JUDICATA*.

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

3. THE TRIAL COURT ERRED IN NOT FINDING THAT THE LAND KNOWN AS "*PINIRAT*" WAS THE SHARE OF FAUSTINO ABALOS, WHICH HE SOLD TO HIS SONS, THE PLAINTIFFS ROMULO AND MAURO ABALOS, AND IN APPLYING *RES JUDICATA*.

4. THE TRIAL COURT ERRED IN VOIDING THE INSTRUMENTS OF TRANSFER EXECUTED BY FAUSTINO ABALOS IN FAVOR OF ROMULO ABALOS OF HIS ¼ SHARE OF THE [*"DUYAO"*] LOT AND IN FAVOR OF MAURO ABALOS AND ROMULO ABALOS OF THE *"PINIRAT"* LOT.

5. THE TRIAL COURT ERRED IN NOT UPHOLDING THE CLAIM OF PLAINTIFF ROMULO ABALOS OVER ¼ OF THE ["*DUYAO*"] LOT AND THE CLAIM OF PLAINTIFFS MAURO ABALOS AND ROMULO ABALOS OVER THE [*"PINIRAT"*] LOT.[36]

On August 31, 2001, the CA rendered its Decision.[37] According to the appellate court, the first and second assigned errors of Panfilo are unmeritorious on the ground that the disposition of the trial court in Civil Case No. 15465 insofar as the *Duyao* is concerned has no factual and legal basis. It also held untenable his third and fourth assigned errors, noting that the principles of *res judicata* and estoppel are not applicable in this case since respondents were not made parties to Civil Case No. 15465 despite their acquisition of the contested parcels prior to the commencement of said case. Finally, Panfilo's fifth assigned error was rejected, saying that this Court already settled the issue of *res judicata* in G.R. No. 77965 when petitioner questioned the propriety of the issuance of the writ of preliminary injunction.

On the other hand, the CA ruled that the first assigned error of respondents was rendered moot and academic since it was stipulated and agreed upon during the pre-trial of the present case that the dispute covers only parcels (a), (d) and (f). The second assigned error, nonetheless, was affirmed, observing

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[36] *Id.* at 91-92.

[37] *Id.* at 183-201.

that the *Duyao* property was co-owned *pro-indiviso* by the four remaining children of spouses Francisco and Teodorica; hence, Faustino's transfer of his ¼ share during his lifetime in favor of his son Romulo is perfectly legal. However, the CA denied the third assigned error as it found that the *Pinirat* was Roman Abalos' advance legitime, which, upon his death, was inherited by his remaining siblings. Since Maria subsequently died without transferring her share, her part of the *Pinirat* should be divided among Pedro (which is transmitted to Danilo), Faustino and Panfilo. As Faustino's share over the *Pinirat* is with respect to 1/3 portion thereof, he could validly convey only such part to Romulo and Mauro.

The CA disposed:

WHEREFORE, premises considered, the assailed *Decision* of the court *a quo* in Civil Case No. 16289 is hereby **modified**, as follows:

1. Being co-owners of Duyao Fishpond, plaintiffs-appellants Spouses Aurora Bucal and Demetrio Bucal, plaintiffs-appellants Spouses Romulo Abalos and Jesusa O. Abalos, defendant-appellant Panfilo Abalos and Danilo Abalos, in representation of his deceased father, Pedro Abalos, should divide and distribute the same equally;

2. One-third of the Pinirat Fishpond is co-owned by plaintiffs-appellants Spouses Romulo Abalos and Jesus Abalos, and Spouses Mauro Abalos and Luzviminda R. Abalos; That defendant-appellant Panfilo Abalos is the sole owner of another 1/3 portion of the Pinirat fishpond; While the remaining 1/3 portion is for Danilo Abalos, in representation of his deceased father Pedro Abalos;

3. No pronouncement as to cost.

SO ORDERED.[38]

Panfilo moved for reconsideration of the Decision but was denied.[40]

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[38] *Id.* at 200-201.

[39] *Id.* at 204-208, 255.

Hence this petition.

Echoing the same grounds relied upon by their father, petitioners now claim that the CA seriously erred in failing to consider the finality of the Decision in Civil Case No. 15465. According to them, the finding that respondents became owners of the subject properties prior to the institution of said case in effect modified the disposition and distribution previously ordered. Petitioners opine that when the CA ruled that respondents have acquired ownership of the questioned parcels prior to the commencement of Civil Case No. 15465 it had disregarded the conclusiveness of a final judgment rendered in said case which decreed the annulment of all documents and/or instruments transferring said properties and were considered inconsistent with the order of partition. They contend that sustaining the conclusion of the CA would allow the re-opening of the factual issue of whether the documents, which were the source of respondents' alleged title, were valid — an issue that was dealt with in an extensive hearing on the merits conducted in said case and supported by testimonial and documentary evidence for the purpose. Being the prevailing party in Civil Case No. 15465, in regard to which respondents had remained silent and did not even care to intervene or question, petitioners assert that they already acquired a vested right over the entire *Duyao* and ½ portion of the *Pinirat*. They also oppose the CA's failure to recognize that estoppel and laches have already set in to bar respondents from further pursuing their claims.

The petition is not meritorious.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[40]

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[40] See *Khemani v. Heirs of Anastacio Trinidad*, G.R. No. 147340, December 13, 2007, p. 8, citing *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551 (2002).

For the preclusive effect of *res judicata* to be enforced, however, the following requisites must be present: (1) the judgment or order sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the first case must be a judgment on the merits; and (4) there must be between the first and second action, identity of parties, subject matter and causes of action.[41]

In the instant case, the fourth requisite, in particular the identity of parties, is clearly wanting.

As found by the CA, this Court, through our earlier resolution in G.R. No. 77965, already settled that *res judicata* does not apply in this case. In G.R. No. 77965, which Panfilo instituted to challenge the propriety of the writ of preliminary injunction issued by the trial court, this Court agreed with the CA's disposition that respondents are considered as third persons with respect to Civil Case No. 15465 since they were not impleaded as defendants therein. This Court held as in accordance with law and jurisprudence the CA's opinion that all those who did not in any way participate or intervene in the partition case are considered third persons within the contemplation of Article 499 of the Civil Code.[42]

The foregoing rule still stands.

Indeed, Panfilo, the father of petitioners, should have impleaded respondents when he filed Civil Case No. 15465 since at that

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[41] *Heirs of Igmedio Maglaque v. Court of Appeals*, G.R. No. 163360, June 8, 2007, 524 SCRA 234, 240; *Heirs of Rosendo Lasam v. Umengan*, G.R. No. 168156, December 6, 2006, 510 SCRA 496, 510; and *Rivera v. Heirs of Romualdo Villanueva*, G.R. No. 141501, July 21, 2006, 496 SCRA 135, 140.

[42] Art. 499 of the Civil Code provides:

Art. 499. The partition of a thing owned in common shall not prejudice third persons, who shall retain the rights of mortgage, servitude, or any other real rights belonging to them before the division was made. Personal rights pertaining to third persons against the co-ownership shall also remain in force, notwithstanding the partition.

time the latter were already claiming ownership over the subject fishponds, which were transferred in their names prior to the commencement of the case. Petitioners cannot shift to respondents the burden of joining the case because they are not duty bound to intervene therein and they have every right to institute an independent action: *First*, intervention is not compulsory or mandatory but merely optional and permissive;[43] and *Second*, as the persons who are in actual possession of the fishponds they claim to own, respondents may wait until their possession are in fact disturbed before taking steps to vindicate their rights. Understandably, at the time of the institution and pendency of Civil Case No. 15465, respondents still had no definite idea as to how the very nature of the partition case could actually affect their possession.

On the other hand, Panfilo had personal knowledge that respondents acquired ownership of the properties prior to the filing of Civil Case No. 15465, that they are in actual possession thereof, and that they have declared the lands in their names for taxation purposes. Panfilo could not be ignorant of these because he resided in the same locality where the properties are found.[44] Quite startling, however, is that he did not bother to implead respondents in the partition case despite all these and the fact that the defendants therein raised the point that Faustino was not the owner of some of the lands in question and that they belong to others not parties to the case.[45] As his successors-in-interest, petitioners must suffer from Panfilo's evident omission.

Even if *res judicata* requires not absolute but substantial identity of parties, still there exists substantial identity only when the "additional" party acts **in the same capacity or is in privity**

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[43] See *Cruzcosa v. Hon. H. Concepcion, et al.*, 101 Phil. 146, 150 (1957), as cited in *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 711 (2003), and *Mabayo Farms, Inc. v. Court of Appeals*, 435 Phil. 112, 119 (2002).

[44] *Records*, p. 180.

[45] *Id.* at 99.

with the parties in the former action.[46] In this case, while it is true that respondents are legitimate children and relatives by affinity of Faustino it is more important to remember that, as shown by their documents of acquisition, they became owners of the subject fishponds not through Faustino alone but also from a third person (*i.e.*, Maria Abalos). Respondents are asserting their own rights and interests which are distinct and separate from those of Faustino's claim as a hereditary heir of Francisco Abalos. Hence, they cannot be considered as privies to the judgment rendered in Civil Case No. 15465. Unfortunately for petitioners, they relied solely on their untenable defense of *res judicata* instead of contesting the genuineness and due execution of respondents' documentary evidence.

Moreover, Panfilo erred in repeatedly believing that there was no necessity to implead respondents as defendants in Civil Case No. 15465 since, according to him, the necessary parties in a partition case are only the co-owners or co-partners in the inheritance of Francisco Abalos. On the contrary, the Rules of Court provides that in an action for partition, all other persons interested in the property shall be joined as defendants.[47] Not only the co-heirs but also all persons claiming interests or rights in the property subject of partition are indispensable parties.[48] In the instant case, it is the responsibility of Panfilo as plaintiff in Civil Case No. 15465 to implead all indispensable parties, that is, not only Faustino and Danilo but also respondents in their capacity as vendees and donees of the subject fishponds. Without their presence in the suit the judgment of the court cannot attain real finality against them. Being strangers to the first case, they are not bound by the decision rendered therein; otherwise, they would be deprived of their constitutional right to due process.[49]

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[46] *Khemani v. Heirs of Anastacio Trinidad*, G.R. No. 147340, December 13, 2007, p. 9.

[47] SECTION 1, RULE 69.

[48] *Sepulveda, Sr. v. Pelaez*, G.R. No. 152195, January 31, 2005, 450 SCRA 302, 312.

[49] See *Galicia v. Manliquez Vda. De Mindo*, G.R. No. 155785, April 13, 2007, 521 SCRA 85, 93-95; *Moldes v. Villanueva*, G.R. No. 161955, August

Finally, it must be stressed that in a complaint for partition, the plaintiff seeks, *first*, a declaration that he is a co-owner of the subject properties; and *second*, the conveyance of his lawful shares. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved.[50]

Reyes-de Leon v. Del Rosario[51] held:

> The issue of ownership or co-ownership, to be more precise, must first be resolved in order to effect a partition of properties. This should be done in the action for partition itself. As held in the case of *Catapusan v. Court of Appeals*:
>
> > 'In actions for partition, the court cannot properly issue an order to divide the property unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition. Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his complaint the 'nature and the extent of his title' to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties. x x x' (citations omitted)[52]

It is only properties owned in common that may be the object of an action for partition; it will not lie if the claimant has no rightful interest over the subject property. Thus, in this case, only the shares in the lots which are determined to have been co-owned by Panfilo, Faustino and Danilo could be included in the order of partition and, conversely, shares in the lots which were validly disposed of in favor of respondents must be excluded

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31, 2005, 468 SCRA 697, 708; and *Sepulveda, Sr. v. Pelaez*, G.R. No. 152195, January 31, 2005, 450 SCRA 302, 314.

[50] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 197.

[51] G.R. No. 152862, July 26, 2004, 435 SCRA 232.

[52] *Id.* at 239. See also *Heirs of Velasquez v. Court of Appeals*, 382 Phil. 438, 453-454 (2000).

therefrom. In this connection, the Court sees no reason to depart from the findings of fact and the partition ordered by the appellate court as these are amply supported by evidence on record. Furthermore, the rule is that factual issues are beyond our jurisdiction to resolve since in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure this Court's power is limited only to review questions of law — when there is doubt or difference as to what the law is on a certain state of facts.[53]

WHEREFORE, the petition is *DENIED* and the August 31, 2001 Decision and November 20, 2002 Resolution of the Court of Appeals in CA-G.R. CV No. 39138 are *AFFIRMED*.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Leonardo-de Castro, JJ.*, concur.

FIRST DIVISION

[G.R. No. 163566. February 19, 2008]

RAYMUNDO and PERLA DE GUZMAN, *petitioners, vs.* **PRAXIDES J. AGBAGALA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; A DECREE OF REGISTRATION PATENT AND THE CERTIFICATE OF TITLE ISSUED

[53] See *Sandejas v. Sps. Ignacio*, G.R. No. 155033, December 19, 2007, p. 9; *Antonio v. Sps. Santos, et al.*, G.R. No. 149238, November 22, 2007, p. 6; and *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, November 22, 2007, p. 8.

PURSUANT THERETO MAY BE ATTACKED ON THE GROUND OF FALSIFICATION OR FRAUD WITHIN ONE YEAR FROM THE DATE OF ISSUANCE ; SUCH ATTACK MUST BE DIRECT AND NOT BY COLLATERAL PROCEEDING. — A decree of registration or patent and the certificate of title issued pursuant thereto may be attacked on the ground of falsification or fraud within one year from the date of their issuance. Such an attack must be direct and not by a collateral proceeding. The rationale is this: x x x [The] public should be able to rely on a registered title. The Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

2. ID.; ID.; ID.; ALTHOUGH THE ATTACK ON OCT NO. P-30187 WAS MERELY COLLATERAL, THE PRINCIPLE OF INDEFEASIBILITY DOES NOT APPLY BECAUSE THE FREE PATENT ON WHICH THE CERTIFICATE OF TITLE WAS BASED IS NULL AND VOID. — In the present case, the attack on OCT No. P-30187 was merely collateral because the action was principally for the declaration of nullity of the deed of donation and the other deeds of conveyance which followed. However, the principle of indefeasibility does not apply when the patent and the title based thereon are null and void. An action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral, attack. OCT No. P-30187 was registered on the basis of a free patent which the RTC ruled was issued by the Director of Lands without authority. The petitioners falsely claimed that the land was public land when in fact it was not as it was private land previously owned by Carmen who inherited it from her parents. This finding was affirmed by the CA. There is no reason to reverse it. The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private ownership of land — as when there is a

prima facie proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because the Public Land law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain. Since the Director of Lands has no authority to grant a free patent over privately owned land, any title issued pursuant thereto is null and void. Therefore, although OCT No. P-30187 was merely collaterally attacked, it was still correctly nullified because the free patent on which it was based was null and void *ab initio*.

APPEARANCES OF COUNSEL

Tanopo & Serafica Law Firm for Sps. De Guzman.
Arsenio A. Merrera for Sps. De Leon.
Nolan R. Evangelista for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated October 14, 2003 and April 20, 2004, respectively, in CA-G.R. CV No. 55238 which affirmed the decision of the Regional Trial Court (RTC), Lingayen, Pangasinan, Branch 37 dated May 30, 1996 in Civil Case No. 16516.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice B. A. Adefuin-de la Cruz (retired) and concurred in by Associate Justices Eliezer R. de los Santos and Jose C. Mendoza of the Ninth Division of the Court of Appeals; *rollo*, pp. 22-31.

[3] No copy of the resolution could be found in the *rollo*.

The spouses Elias P. Javier and Maria Sison died on May 8, 1942 and July 1936, respectively, both in Lingayen, Pangasinan. They were survived by their six children, namely: Conrado Javier, respondent Praxides Javier Agbagala, Nicasio Javier, Carmen Javier, Encarnacion Javier Ongnoy[4] and Juana Javier. They left 13 parcels of land which their children inherited and divided among themselves in a public document of extrajudicial partition dated June 29, 1948. Five of the parcels of land[5] were inherited by Carmen. On February 25, 1984, she died single, without any compulsory heir and survived only by her sisters Encarnacion, respondent Praxides, Juana and brother Nicasio.[6]

According to respondent and her daughter, Milagros Agbagala Gutierrez, one afternoon sometime in mid-1987, a certain Rosing Cruz went to their house to borrow ₱30,000 from Milagros. Rosing offered as collateral a document which turned out to be a deed of donation dated January 25, 1977 purportedly signed by Carmen in favor of her niece Madelene Javier Cruz, daughter of Juana and sister-in-law of Rosing. Milagros told her (Rosing) that she had no money to lend. Thereafter, Milagros, upon the request of respondent, went to the Register of Deeds in Lingayen, Pangasinan to verify the existence of such donation. She found out that it was indeed duly registered. It was the first time respondent came to know of such donation and the transfer of Carmen's properties to their niece Madelene.[7]

According to Madelene, she lived in her Aunt Carmen's house[8] and had been her companion since she was four years old. She transferred to Manila only when she graduated in 1970. On January 25, 1977, Carmen executed the deed of donation in

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[4] In the amended complaint dated September 8, 1988, Encarnacion's surname was "Ongpoy." *Rollo*, p. 72.

[5] These were covered by tax declaration numbers 1235, 1236, 1244, 48, 3743. The first three were located in Aguilar, Pangasinan and the last two in Lingayen, Pangasinan; *id.*, p. 69.

[6] *Id.*, p. 23.

[7] *Id*.

[8] In Avenida Rizal East, Lingayen; *id*.

her favor. She was present when all the signatories thereon, including the notary public, signed the document. From that time on, she received the rentals of the properties covered by the donation. Carmen even informed her tenants that Madelene would inherit the properties upon her death.[9]

On November 18, 1987,[10] respondent filed civil case No. 16516 against Madelene praying that the deed of donation be nullified, as well as the subsequent transfers to other parties of the properties covered by the spurious donation.[11] An amended complaint was filed on September 15, 1988[12] to include the transferees[13] of the properties including petitioner spouses Raymundo and Perla de Guzman, who were the transferees of the land located at Tampac, Aguilar, Pangasinan.[14]

Respondent claimed that the deed of donation was fake. This was confirmed by the handwriting expert of the National Bureau of Investigation, Rogelio G. Azores,[15] who examined the document and compared it with several documents bearing the signature of Carmen. He found that the purported signature of the late Carmen on the deed of donation was forged.[16]

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[9] *Id*.

[10] *Id*., p. 58.

[11] *Id*., p. 83.

[12] *Id*., p. 11.

[13] Mauro Agustin was the transferee of a parcel of residential land situated along Avenida Rizal East, Lingayen, Pangasinan. Dionisio and Remedios Castro were the transferees of the one-half eastern portion of a low rice land situated in Pogonboa, Aguilar, Pangasinan and with an area of 9,468 sq. m. Guillermo and Betty de Leon were transferees of an irrigated rice land with an area of 4,400 sq. m., more or less, situated at Tampac, Aguilar, Pangasinan and another irrigated rice land with an area of 5,756 sq. m., more or less, situated in Pogonboa, Aguilar, Pangasinan; *id*., p. 24.

[14] The *rollo* does not indicate the size of the property transferred to petitioners nor does it contain a copy of the deed of sale covering said property.

[15] Assistant Chief and Handwriting Examiner, Questioned Documents Section; *rollo*, p. 27.

[16] *Id*., p. 23.

Petitioners filed their answer dated November 28, 1989.[17] They claimed that they applied for a free patent over the subject area on August 10, 1987 and on November 26, 1987, they were issued free patent No. 165790.[18] On December 11, 1987, Original Certificate of Title (OCT) No. P-30187 was registered in their name. During the trial, they also presented a tax declaration and realty tax receipts from 1985 to 1990 issued to them.[19]

In a decision dated May 30, 1996, the RTC declared the deed of donation in favor of Madelene null and void *ab initio*, canceled the deeds of sale executed by Madelene in favor of the defendants,[20] declared null and void OCT No. P-30187 in the name of petitioners and directed all the defendants to jointly and severally pay respondent ₱6,000 as attorney's fees and litigation expenses and each of the defendants to pay respondent ₱1,000 as nominal damages. It further ruled that the properties subject of the annulled documents should revert back to the intestate estate of Carmen.[21]

In a decision promulgated on October 14, 2003, the CA affirmed the decision of the RTC. It denied reconsideration in a resolution promulgated on April 20, 2004.

Hence this petition raising the lone issue of whether OCT No. P-30187 was correctly nullified considering that it cannot be the subject of collateral attack under Section 48 of PD 1529.[22]

Petitioners argue that at the time of the filing of the amended complaint on September 15, 1988, OCT No. P-30187 had already been issued in their name. Thus this certificate of title can only be nullified in an action directly attacking its validity.

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[17] *Id.*, p. 87.

[18] *Id.*, pp. 29-30.

[19] *Id.*, pp. 25, 27-28.

[20] Namely the Spouses Agustin, Spouses Castro and Spouses de Leon; *id.*, p. 22.

[21] *Id.*, pp. 22-23.

[22] Property Registration Decree.

Respondent counters that at the time the amended complaint was filed, OCT No. P-30187 (which was issued on December 11, 1987) was not yet indefeasible since less than one year had lapsed. Furthermore, she asserts that the doctrine of indefeasibility does not apply if the free patent is null and void *ab initio*.

We agree with respondent.

Sections 32 and 48 of PD 1529 state:

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 judgment, 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] 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. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud.

x x x x x x x x x

SEC. 48. Certificate not subject to collateral attack. — A **certificate of title shall not be subject to collateral attack**. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law. (Emphasis supplied)

Indeed, a decree of registration or patent and the certificate of title issued pursuant thereto may be attacked on the ground of falsification or fraud within one year from the date of their

issuance. Such an attack must be direct and not by a collateral proceeding.[23] The rationale is this:

> x x x [The] public should be able to rely on a registered title. The Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.[24]

An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[25]

In the present case, the attack on OCT No. P-30187 was merely collateral because the action was principally for the declaration of nullity of the deed of donation and the other deeds of conveyance which followed.

However, the principle of indefeasibility does not apply when the patent and the title based thereon are null and void. An action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral, attack.[26] OCT No. P-30187 was registered on the basis of a free patent which the RTC ruled was issued by the Director of Lands without

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[23] *Borbajo v. Hidden View Homeowners, Inc.*, G.R. No. 152440, 31 January 2005, 450 SCRA 315, 325; *Ybañez v. Intermediate Appellate Court*, G.R. No. 68291, 6 March 1991, 194 SCRA 743, 749.

[24] *Ingusan v. Heirs of Aureliano I. Reyes*, G.R. No. 142938, 28 August 2007.

[25] *Heirs of Enrique Diaz v. Virata*, G.R. No. 162037, 7 August 2006, 498 SCRA 141, 164-165, citing *Sarmiento v. Court of Appeals*, G.R. No. 152627, 16 September 2005, 470 SCRA 99, 107-108.

[26] *Ferrer v. Bautista*, G.R. No. L-46963, 14 March 1994, 231 SCRA 257, 262, citing *Agne v. Director of Lands*, G.R. Nos. L-40399 & 72255, 6 February 1990, 181 SCRA 793, 806-807 and *Estoesta, Sr. v. Court of Appeals*, G.R. No. 74817, 8 November 1989, 179 SCRA 203.

authority.[27] The petitioners falsely claimed that the land was public land when in fact it was not as it was private land previously owned by Carmen who inherited it from her parents. This finding was affirmed by the CA. There is no reason to reverse it.[28]

> The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private ownership of land as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants is not affected by the issuance of a free patent over the same land, because the Public Land law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.[29]

Since the Director of Lands has no authority to grant a free patent over privately owned land, any title issued pursuant thereto is null and void.[30]

Therefore, although OCT No. P-30187 was merely collaterally attacked, it was still correctly nullified because the free patent on which it was based was null and void *ab initio*.

WHEREFORE, the petition is hereby *DENIED*. The October 14, 2003 decision and April 20, 2004 resolution of the Court of Appeals in CA-G.R. CV No. 55238 are *AFFIRMED*.

Costs against petitioners.

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[27] *Rollo,* pp. 88-90.

[28] Moreover, petitioners did not question these findings of fact.

[29] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*, G.R. No. 151440, 17 June 2003, 404 SCRA 193, 199, citing *Magistrado v. Esplana*, G.R. No. 54191, 8 May 1990, 185 SCRA 104, 109.

[30] *Ferrer v. Bautista*, *supra* at note 26, citing *Tuason v. Court of Appeals*, G.R. Nos. L-48297 and L-48265, 7 January 1987, 147 SCRA 37, 47.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167461. February 19, 2008]

VICKY MOSTER, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; BOUNCING CHECKS LAW (B.P. BLG. 22); ELEMENTS OF THE OFFENSE.— *B.P. Blg. 22* punishes as *malum prohibitum* the mere issuance of a worthless check, provided the other elements of the offense are proved. Section 1 enumerates the elements of *B.P. Blg. 22*, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

2. ID.; ID.; ID.; ONLY THE FIRST AND THIRD ELEMENTS HAVE BEEN ESTABLISHED BY THE PROSECUTION.— Upon careful examination of the records, however, we found that only the first and third elements have been established by the prosecution. By her own admission, petitioner issued the three subject checks, two of which were presented to PhilBank but were dishonored and stamped for the reason "Account Closed." Under Section 3 of *B.P. Blg. 22*, the introduction in

evidence of the dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be *prima facie* evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.

3. ID.; ID.; ID.; THE SECOND ELEMENT OF THE OFFENSE CREATES A PRESUMPTION THAT THE ISSUER OF THE CHECK WAS AWARE OF THE INSUFFICIENCY OF THE FUNDS WHEN HE ISSUED THE CHECK AND THE BANK DISHONORED IT; FAILURE OF PROSECUTION TO PROVE RECEIPT BY PETITIONER OF THE REQUISITE WRITTEN NOTICE OF DISHONOR AND THAT SHE WAS GIVEN AT LEAST FIVE BANKING DAYS WITHIN WHICH TO SETTLE HER ACCOUNT CONSTITUTE SUFFICIENT GROUND FOR HER ACQUITTAL.— As to the second element, Section 2 of *B.P. Blg. 22* creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it. This presumption, however, arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. Ordinarily, preponderance of evidence is sufficient to prove notice. But in criminal cases, the quantum of proof required is proof beyond reasonable doubt. In the instant case, the prosecution merely presented a copy of the demand letter allegedly sent to petitioner through registered mail and the registry return card. There was no attempt to authenticate or identify the signature on the registry return card. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of petitioner or her authorized agent remains a mystery. We stress that as we have held in *Rico v. People*, receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor. Unfortunately, the prosecution presented only the testimony of Presas to prove mailing and receipt of the demand letter. In *Cabrera v. People*, we ruled that it is not enough for the prosecution to prove that

a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check. We even held in *Ting v. Court of Appeals* that possibilities cannot replace proof beyond reasonable doubt. When there is insufficient proof of receipt of notice of dishonor, as in this case, the presumption of knowledge of insufficiency of funds cannot arise. A notice of dishonor personally sent to and received by the accused is necessary before one can be held liable under *B.P. Blg. 22*. The failure of the prosecution to prove the receipt by petitioner of the requisite written notice of dishonor and that she was given at least five banking days within which to settle her account constitutes sufficient ground for her acquittal. We must emphasize, as we held in *King v. People*, the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence. Any doubt shall be resolved in favor of the accused.

4. ID.; ID.; ID.; PETITIONER'S ACQUITTAL BASED ON REASONABLE DOUBT DOES NOT PRECLUDE AWARD OF CIVIL DAMAGES.— while petitioner must be acquitted for violation of *B.P. Blg. 22* for lack of proof of the second element of the offense, she should be ordered to pay the face value of the three checks less the six thousand pesos she had already paid, plus legal interest, conformably with our ruling in *Rico v. People*, where we held that an acquittal based on reasonable doubt does not preclude the award of civil damages. As admitted by petitioner herself in her testimony, she has not paid her obligation.

APPEARANCES OF COUNSEL

Socrates C. Pigao for petitioner.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.:*

This petition assails the Decision[1] dated October 29, 2004 of the Court of Appeals in CA-G.R. CR No. 27595, affirming with modification the Decision[2] dated August 28, 2002 of the Regional Trial Court (RTC) of Caloocan City, Branch 124. The Court of Appeals found petitioner Vicky L. Moster guilty on two counts for violation of *Batas Pambansa Blg. 22* (*B.P. Blg. 22*),[3] otherwise known as the Bouncing Checks Law. She was sentenced to pay, in addition to the fines imposed with subsidiary imprisonment in case of insolvency, ₱273,345, representing the two unpaid checks subject of this case. Also assailed is the Resolution [4] dated March 16, 2005 of the appellate court denying petitioner's motion for reconsideration.

The antecedent facts, as culled from the findings of the trial and appellate courts, are as follows:

According to complainant Adriana Presas, who is engaged in the rediscounting business, on or about August 1995, petitioner obtained from her a loan of ₱450,000, for which the petitioner issued as payment three postdated PhilBank checks, as follows:

Check No. 026137 dated October 31, 1995 amounting to ₱94,257.00;
Check No. 026138 dated October 31, 1995 amounting to ₱188,514.00;
Check No. 026124 dated December 31, 1995 amounting to ₱84,831.00.[5]

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[1] *Rollo*, pp. 45-56. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente concurring.

[2] *Id*. at 124-136. Penned by Presiding Judge Victoria Isabel A. Paredes.

[3] AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES, approved on April 3, 1979.

[4] *Rollo*, p. 59.

[5] Records, pp. 45-A, 45-B and 45-C.

The three checks were all payable to cash. Presas testified she did not deposit the checks on their due dates upon petitioner's request and assurance that they would be replaced with cash. When she could not wait any longer, Presas deposited Check Nos. 026138 and 026124 in her Westmont Bank account, sometime in January 1996 and March 1996, respectively, only to be notified later that the checks were dishonored because the account had been closed. Presas said she did not deposit Check No. 026137 after she agreed to petitioner's request to withhold its deposit as it had not yet been funded. After receiving notice that Check Nos. 026138 and 026124 had been dishonored, Presas immediately informed petitioner thereof and demanded payment for the value of the checks. This demand, however, went unheeded.

In a letter dated January 14, 1997, Presas through counsel, demanded from petitioner the settlement of ₱367,602, representing the total value of the three checks, within five days from receipt. Petitioner, however, did not comply. Thus, three Informations for violation of *B.P. Blg. 22*, docketed as Criminal Case Nos. 178240, 178241 and 178242, were filed against petitioner in Branch 49, Metropolitan Trial Court (MeTC), Caloocan City. The Informations were similarly worded except with respect to the check numbers, the dates and amounts of the checks,[6] as follows:

That sometime in the month of August 1995 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make and issue Check No. 026138 drawn against PHILBANK in the amount of ₱188,514.00 dated October 31, 1995 to apply for value in favor of ADRIANA PRESAS well knowing at the time of issue that she has no sufficient fund in or credit with the drawee bank for the payment of such check in full upon its presentment, which check was subsequently dishonored for the reason ACCOUNT CLOSED and with intent to defraud, failed and still fails to pay the said complainant the amount of ₱188,514.00

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[6] Check No. 026137 in the amount of ₱94,257.00 dated October 31, 1995 and Check No. 026124 in the amount of ₱84,831.00 dated December 31, 1995.

despite receipt of notice from the drawee bank that said check has been dishonored and had not been paid.

CONTRARY TO LAW.[7]

When arraigned, petitioner pleaded not guilty.

At the trial, Alfredo S. Daza, Branch Manager of PhilBank, identified the three subject checks as PhilBank checks drawn against the account of petitioner. He also testified that only Check Nos. 026138 and 026124 were presented to the bank for clearing, and that these were dishonored for the reason "Account Closed." Daza showed a certified true copy of a computer printout, showing that petitioner's account under Account Number 1053-0463-2 had a temporary overdraft or negative balance of ₱3,301.04 as of November 22, 1995, for which reason the account was closed. Daza explained that issuing a check without sufficient funds was against bank policy, and when an account holder issues an unfunded check, the bank has the prerogative to close the account.

Petitioner, for her part, testified that sometime in August 1994, she got from Presas, by way of checks rediscounting, her first loan for ₱60,000, secured by her Isuzu vehicle. After obtaining additional loan, her total loan amounted to ₱150,000, but because of the interest, it ballooned to ₱375,345. According to petitioner, the three PhilBank checks she issued were the payment for the aforementioned loan. After Check Nos. 026138 and 026124 bounced, she replaced them with Asiatrust Bank Check No. 0446323 dated February 8, 1996 for ₱273,345, the value of the two bounced checks. Presas did not encash the first check, Check No. 026137. When she tried to retrieve the initial three subject checks, Presas refused, claiming petitioner still owed interest.

On December 27, 2000, the MeTC rendered its decision, convicting petitioner as follows:

One of the essential elements of the offense of violation of the Anti-Bouncing Check Law is that upon its presentment, the check

[7] Records, p. 2.

is subsequently dishonored by the drawee bank for insufficiency of funds or credit. As admittedly, PhilBank Check No. 026137 in the amount of ₱94,257.00 dated Oct. 31, 1995 was not presented to the drawee bank and therefore could not have been dishonored for insufficiency of fund or credit, the crime of issuing a bum check of which the accused is charged in **Crim. Case No. 178241 does not exist** and accused Vicky Moster *y* Libarnes is hereby [a]cquitted of the charge.

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WHEREFORE, upon a careful consideration of the foregoing evidence, the Court finds the same to be sufficient to support a conviction of the accused beyond reasonable doubt of the offense of violation of B.P. [Blg.] 22 on **two counts** and hereby sentences accused Vicky Moster *y* Libarnes to pay a fine of two hundred thousand pesos (₱200,000.00) in **Crim. Case No. 178240** and a fine of eighty-five thousand pesos (₱85,000.00) in **Crim. Case No. 178242**, with subsidiary imprisonment in both cases in case of insolvency.

Accused is further ordered to pay complainant Adriana Presas the amount of three hundred sixty-seven thousand six hundred two pesos (**₱367,602.00**) representing **the value of the three PhilBank [c]hecks that are yet unpaid** with interest thereon at 12% per annum from February, 1996 until the amount is fully paid and to pay the cost of these suits.

SO ORDERED.[8] (Emphasis supplied.)

The RTC affirmed *in toto* the MeTC's decision and subsequently denied the motion for reconsideration. On appeal, the Court of Appeals affirmed with modification the RTC's decision, thus:

WHEREFORE, we ***AFFIRM*** the assailed decision of the RTC with the ***modification*** that the accused-petitioner ***is ordered to pay, in addition to the fines imposed, the amount of Two Hundred Seventy-Three Thousand, Three Hundred Forty-Five Pesos (₱273,345.00)***, representing the **value of the two PhilBank Checks that are yet unpaid**, with interest thereon at 12% per annum from February 1996 until the amount is fully paid, and to pay the cost of these suits.

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[8] *Rollo*, pp. 102-103.

SO ORDERED.[9] (Emphasis supplied.)

Petitioner sought reconsideration, but her motion was denied. Hence, this petition, anchored on the following grounds:

I.

WHETHER OR NOT PETITIONER'S GUILT HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT AND THAT THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED IN A MANNER THAT DISREGARDED THE PRECEDENTS LAID DOWN IN *MAGNO VS. COURT OF APPEALS*, 210 SCRA 471 [1992]; *CABRERA VS. PEOPLE*[,] 407 SCRA 247 [2003]; *RICO VS. PEOPLE*[,] 392 SCRA 61 [2002]; *KING VS. PEOPLE*[,] 319 SCRA 654 [1999]; *LLAMAD[O] VS. COURT OF APPEALS*, 270 SCRA 423 [1997] AND *LAO VS. COURT OF APPEALS*, 274 SCRA 572 [1997].

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR, AND MISINTERPRETED THE FACTS AND EVIDENCE IN AFFIRMING THE DECISION OF THE RTC WITH THE MODIFICATION THAT THE ACCUSED-PETITIONER IS ORDERED TO PAY IN ADDITION TO THE FINES IMPOSED THE AMOUNT OF TWO HUNDRED SEVENTY-THREE THOUSAND THREE HUNDRED FORTY-FIVE PESOS (Ps.273,345.00) REPRESENTING THE VALUE OF THE TWO PHILBANK CHECKS THAT ARE YET UNPAID. WITH INTEREST THEREON AT 12% PER ANNUM FROM FEBRUARY 1996 UNTIL THE AMOUNT IS FULLY PAID AND TO PAY THE COST OF THESE SUITS.[10]

Simply, the two issues for our resolution are (1) Was petitioner's guilt proven beyond reasonable doubt? and (2) Did the Court of Appeals err in holding petitioner liable for the value of the two PhilBank checks, with 12% interest?

Petitioner admits she issued the three subject checks but insists that she is not liable under *B.P. Blg. 22* because the prosecution failed to prove the element of knowledge of the

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[9] *Id*. at 55.

[10] *Id*. at 390-391.

insufficiency of funds as it had not established that she actually received a notice of dishonor. She adds that she had already settled her obligation with Presas when she replaced the two bounced checks with Asiatrust Bank Check No. 0446323.

Respondent, through the Office of the Solicitor General, counters that petitioner was duly notified of the dishonor of the checks when petitioner received Presas's January 14, 1997 letter[11] on January 29, 1997. Respondent claims it presented not only the registry receipt[12] but also the registry return card[13] to prove mailing and receipt of the notice of dishonor. In fact, as respondent argues, petitioner herself admitted she had replaced the dishonored checks with an Asiatrust Bank Check No. 0446323 dated February 8, 1996.

We find merit in the petition.

B.P. Blg. 22 punishes as *malum prohibitum* the mere issuance of a worthless check, provided the other elements of the offense are proved. Section 1[14] enumerates the elements of *B.P. Blg.*

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[11] Records, p. 8.

[12] *Id*.

[13] *Id*.

[14] SEC. 1. *Checks without sufficient funds.*—Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank. Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

22, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[15]

Upon careful examination of the records, however, we found that only the first and third elements have been established by the prosecution. By her own admission, petitioner issued the three subject checks, two of which were presented to PhilBank but were dishonored and stamped for the reason "Account Closed." Under Section 3[16] of *B.P. Blg. 22*, the introduction in evidence of the dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be *prima facie* evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.[17]

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[15] *Tan v. Mendez, Jr.*, G.R. No. 138669, June 6, 2002, 383 SCRA 202, 210.

[16] SEC. 3. *Duty of drawee; rules of evidence*. — It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed, or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same: *Provided*, That where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecution under this Act, the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be *prima facie* evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact.

[17] *Cabrera v. People*, G.R. No. 150618, July 24, 2003, 407 SCRA 247, 256-257.

As to the second element, Section 2[18] of *B.P. Blg. 22* creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it.[19] This presumption, however, arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.[20]

Ordinarily, preponderance of evidence is sufficient to prove notice. But in criminal cases, the quantum of proof required is proof beyond reasonable doubt.[21] In the instant case, the prosecution merely presented a copy of the demand letter allegedly sent to petitioner through registered mail and the registry return card. There was no attempt to authenticate or identify the signature on the registry return card. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of petitioner or her authorized agent remains a mystery. We stress that as we have held in *Rico v. People,*[22] receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor.

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[18] SEC. 2. *Evidence of knowledge of insufficient funds.*—The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

[19] See *King v. People*, G.R. No. 131540, December 2, 1999, 319 SCRA 654, 667-668.

[20] *Rico v. People*, G.R. No. 137191, November 18, 2002, 392 SCRA 61, 72.

[21] *Ting v. Court of Appeals*, G.R. No. 140665, November 13, 2000, 344 SCRA 551, 561.

[22] *Supra* note 20, at 73.

Unfortunately, the prosecution presented only the testimony of Presas to prove mailing and receipt of the demand letter, to wit:

Q: When you were informed by the bank that the checks bounced and you informed the accused about it, what was her answer?
A: Accused told me to wait and she will settle the matter.

Q: What happen to her promises that she will settle the checks?
A: When the accused failed to comply with her promise I filed the case in court.

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Q: Aside from your oral demand, what other demand did you make on the accused?
A: I went to my lawyer to file the case in court.

Q: Aside from filing the complaint what did Atty. Galope do?

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A: …my lawyer Atty. Galope sent a demand letter to the accused.

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Q: There is here attached to the demand letter the registry return card?
A: Yes sir, that is the proof that the demand letter was sent to Vicky Moster.[23]

In *Cabrera v. People*, we ruled that it is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.[24] We even held in *Ting v. Court of Appeals* that possibilities cannot replace proof beyond reasonable doubt. When there is insufficient proof of receipt of notice of dishonor, as in this case, the presumption of knowledge of insufficiency of funds cannot arise.[25] A notice of dishonor

[23] Records, pp. 118-121.

[24] *Cabrera v. People*, *supra* note 17, at 259.

[25] *Ting v. Court of Appeals*, *supra* note 21, at 562.

personally sent to and received by the accused is necessary before one can be held liable under *B.P. Blg. 22*.[26] The failure of the prosecution to prove the receipt by petitioner of the requisite written notice of dishonor and that she was given at least five banking days within which to settle her account constitutes sufficient ground for her acquittal. We must emphasize, as we held in *King v. People*, the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence.[27] Any doubt shall be resolved in favor of the accused.[28]

Nonetheless, while petitioner must be acquitted for violation of *B.P. Blg. 22* for lack of proof of the second element of the offense, she should be ordered to pay the face value of the three checks less the six thousand pesos she had already paid, plus legal interest, conformably with our ruling in *Rico v. People*,[29] where we held that an acquittal based on reasonable doubt does not preclude the award of civil damages. As admitted by petitioner herself in the following testimony, she has not paid her obligation, to wit:

Q: So in other words, **Check No. 026137** dated October 31 in the amount of ₱94,000.00, the original of which is in the possession of the complainant and which is the basis of this case, the same is still not paid Mrs. Witness?

A: Not yet sir.

Q: Likewise, **Check No. 026138** dated Oct. 31, 1995 in the amount of One hundred eighty eight five hundred thousand pesos [sic] which is also in the possession of the complainant and is also the basis of this case is not paid. Is that correct?

A: That ₱188,514.00, that is the check I am referring to that I wanted to be returned to me because I have already paid for that check.

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[26] *Rico v. People, supra* note 20, citing *Lao v. Court of Appeals,* G.R. No. 119178, June 20, 1997, 274 SCRA 572, 594.

[27] *King v. People, supra* note 19, at 670.

[28] *Magno v. Court of Appeals,* G.R. No. 96132, June 26, 1992, 210 SCRA 471, 479.

[29] See *Rico v. People, supra* note 20, at 74.

Q: Likewise, because the complainant was in the possession of the original of **[C]heck No. 0261124** [sic] dated Dec. 13, the same is yet unpaid. Is that correct?
A: I have already issued a check regarding that amount.

Q: Are you implying that **all these checks are replaced by another check?**
A: **Yes.**

Q: Do you have the check now?
A: The check I earlier presented. The check in the amount of ₱273,000[.]

Q: But the check is not encashed by the bank, there was no endorsement by the bank?
A: Yes, because we agreed not to deposit the check.

x x x x x x x x x

Q: So in other words, these checks marked as Exhs. "4" to "13" were already in your possession at the time when you were investigated by the fiscal when you were required to submit the counter affidavit?
A: Yes.

Q: And despite that, you could have presented that whatever [complaint] affidavit just to dismiss these subject cases?
A: Yes.

Q: And you failed to do so?
A: Yes.

Q: **Do you admit that not a single money was paid with respect to these checks?**
A: **I was able to pay her six thousand pesos.**

Q: **Is it correct to say that six thousand pesos cannot clearly cover the amount of three hundred sixty six thousand pesos?**
A: **The check previously marked as Exhs. "4" to "13" are the replacement for the checks.**

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Q: Yes Ms. Witness. What I am asking you is whether those checks, Exhs. "4" to . . . "13" were presented and encashed and you said No Your Honor, so **why do you think that**

those checks were your payment when the same were not encashed?

A: **Because our previous agreement is that before she handed to me the cash loan, she told me to issue several checks but everytime I was able to pay her, for example, one check in the amount of ten thousand pesos, she would return to me one check in the amount of ten thousand pesos, Your Honor**.[30] (Emphasis supplied.)

WHEREFORE, the Decision dated October 29, 2004 and Resolution dated March 16, 2005 of the Court of Appeals in CA-G.R. CR No. 27595 are hereby *REVERSED* and *SET ASIDE*. Petitioner Vicky Moster is acquitted of the charge for violation of *B.P. Blg. 22* on the ground of reasonable doubt. She is, however, *DIRECTED* to pay private complainant the total amount of ₱367,602 corresponding to the three PhilBank checks that are yet unpaid with interest thereon at 12% per annum from the filing of the information until the finality of this decision, the sum of which, inclusive of interest, shall be subject thereafter to 12% per annum interest until the amount due is fully paid.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 168662. February 19, 2008]

SANRIO COMPANY LIMITED, *petitioner, vs.* **EDGAR C. LIM, doing business as ORIGNAMURA TRADING,** *respondent.*

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[30] *Rollo,* pp. 283-284, 287-289.

SYLLABUS

1. CRIMINAL LAW; PRESCRIPTION OF CRIMINAL OFFENSES; PRESCRIPTIVE PERIOD FOR VIOLATION OF THE INTELLECTUAL PROPERTY CODE WAS TOLLED BY THE FILING OF COMPLAINT-AFFIDAVIT BEFORE THE DEPARTMENT OF JUSTICE. — In the recent case of *Brillantes v. Court of Appeals*, we affirmed that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility. Thus, the prescriptive period for the prosecution of the alleged violation of the IPC was tolled by petitioner's timely filing of the complaint-affidavit before the TAPP.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; POWER OF THE PUBLIC PROSECUTOR TO CONDUCT PRELIMINARY INVESTIGATION, ELUCIDATED. — In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof. Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. Because a public prosecutor is the one conducting a preliminary investigation, he determines the existence of probable cause. Consequently, the decision to file a criminal information in court or to dismiss a complaint depends on his sound discretion. As a general rule, a public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. For this reason, courts generally do not interfere with the results of such proceedings. A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of a criminal information against the respondent. By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion. Otherwise stated, such review is appropriate only when the prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Benjamin Santos & Ray Montri C. Santos Law Offices and *Santos Parungao Aquino & Santos Law Offices* for E. Lim.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. CV No. 74660[2] and its resolution[3] denying reconsideration.

Petitioner Sanrio Company Limited, a Japanese corporation, owns the copyright of various animated characters such as "Hello Kitty," "Little Twin Stars," "My Melody," "Tuxedo Sam" and "Zashikibuta" among others.[4] While it is not engaged in business in the Philippines, its products are sold locally by its exclusive distributor, Gift Gate Incorporated (GGI).[5]

As such exclusive distributor, GGI entered into licensing agreements with JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation.[6] These local entities were allowed to manufacture certain products (bearing petitioner's copyrighted animated characters) for the local market.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Perlita J. Tria-Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Jose C. Reyes, Jr. of the Fourth Division of the Court of Appeals. Dated May 3, 2005. *Rollo*, pp. 51-63.

[3] Dated June 22, 2005. *Id.*, pp. 65-66.

[4] *Id.*, p. 15.

[5] *Id.*, p. 132.

[6] *Id.*, p. 155.

Sometime in 2001, due to the deluge of counterfeit Sanrio products, GGI asked IP Manila Associates (IPMA) to conduct a market research. The research's objective was to identify those factories, department stores and retail outlets manufacturing and/or selling fake Sanrio items.[7] After conducting several test-buys in various commercial areas, IPMA confirmed that respondent's Orignamura Trading in Tutuban Center, Manila was selling imitations of petitioner's products.[8]

Consequently, on May 29, 2000, IPMA agents Lea A. Carmona and Arnel P. Dausan executed a joint affidavit attesting to the aforementioned facts.[9] IPMA forwarded the said affidavit to the National Bureau of Investigation (NBI) which thereafter filed an application for the issuance of a search warrant in the office of the Executive Judge of the Regional Trial Court of Manila.[10]

After conducting the requisite searching inquiry, the executive judge issued a search warrant on May 30, 2000.[11] On the same day, agents of the NBI searched the premises of Orignamura Trading. As a result thereof, they were able to seize various Sanrio products.[12]

On April 4, 2002, petitioner, through its attorney-in-fact Teodoro Y. Kalaw IV of the Quisumbing Torres law firm, filed a complaint-affidavit[13] with the Task-Force on Anti-Intellectual Property Piracy (TAPP) of the Department of Justice (DOJ) against respondent for violation of Section 217 (in relation to Sections

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[7] *Id*.

[8] *Id*.

[9] Annex "J", *id*., pp. 132-133.

[10] *Id*., p. 134.

[11] Search warrant No. 00-1616 issued by Manila executive judge Rebecca G. Salvador. Dated May 30, 2000. Annex "K", *id*., pp. 134-135.

[12] Annexes "L", and "L-1", *id*., pp. 136-137.

[13] Docketed as IS No. 2002-205. Annex "M", *id*., pp. 138-144.

177[14] and 178[15]) of the Intellectual Property Code (IPC) which states:

Section 217. **Criminal Penalties.** — 217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

(a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (₱50,000) to One hundred fifty thousand pesos (₱150,000) for the first offense.

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[14] INTELLECTUAL PROPERTY CODE, Sec. 177 provides:

Section 177. **Copy or Economic Rights.** — Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

x x x x x x x x x

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

x x x x x x x x x

[15] INTELLECTUAL PROPERTY CODE, Sec. 178 provides:

Section 178. **Rules on Copyright Ownership**. Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in the case of original literary or artistic works, copyright shall belong to the author of the work;

x x x x x x x x x

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

x x x x x x x x x

(b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (₱150,000) to Five hundred thousand pesos (₱500,000) for the second offense.

(c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (₱500,000) to One million five hundred thousand pesos (₱1,500,000) for the third and subsequent offenses.

(d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of infringement.

217.3. **Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of**:

(a) **Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article**;

(b) **Distributing the article for purpose of trade or any other purpose to an extent that will prejudice the rights of the copyright of the owner in the work; or**

(c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (emphasis supplied)

Respondent asserted in his counter-affidavit[16] that he committed no violation of the provisions of the IPC because he was only a retailer.[17] Respondent neither reproduced nor manufactured any of petitioner's copyrighted item; thus, he did not transgress the economic rights of petitioner.[18] Moreover, he obtained his

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[16] Annex "N", *id*., pp. 145-172.

[17] *Id*., p. 112.

[18] *Id*.

merchandise from authorized manufacturers of petitioner's products.[19]

On September 25, 2002, the TAPP found that:

> Evidence on record would show that respondent bought his merchandise from legitimate sources, as shown by official receipts issued by JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation. In fact, in her letter dated May 23, 2002, Ms. Ma. Angela S. Garcia certified that JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation are authorized to produce certain Sanrio products. **While it appears that some of the items seized during the search are not among those products which [GGI] authorized these establishments to produce, the fact remains that respondent bought these from the abovecited legitimate sources**. At this juncture, it bears stressing that **respondent relied on the representations of these manufacturers and distributors that the items they sold were genuine**. As such, it is not incumbent upon respondent to verify from these sources what items [GGI] only authorized them to produce. **Thus, as far as respondent is concerned, the items in his possession are not infringing copies of the original [petitioner's] products**. (emphasis supplied)[20]

Thus, in a resolution dated September 25, 2002, it dismissed the complaint due to insufficiency of evidence.[21]

Petitioner moved for reconsideration but it was denied.[22] Hence, it filed a petition for review in the Office of the Chief State Prosecutor of the DOJ.[23] In a resolution dated August

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[19] *Id*. To support his claim, respondent submitted photocopies of the receipts issued to him by JC Lucas Creative Products, Inc. and Melawares Manufacturing Corporation as evidence.

[20] *Id*., pp. 113-114.

[21] Penned by state prosecutor Aileen Marie S. Gutierrez and approved by chief state prosecutor Jovencito R. Zuno. Dated September 25, 2002. Annex "A", *id*., pp. 110-115.

[22] Dated January 27, 2003. Annex "B", *id*., pp. 116-117.

[23] Annex "T", *id*., pp. 207-233. Under Department of Justice Circular No. 70 (2000 NPS Rules on Appeal), 3 July 2000.

29, 2003,[24] the Office of the Chief State Prosecutor affirmed the TAPP resolution. The petition was dismissed for lack of reversible error.

Aggrieved, petitioner filed a petition for *certiorari* in the CA. On May 3, 2005, the appellate court dismissed the petition on the ground of prescription. It based its action on Act 3326 which states:

> Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) **after four years for those punished by imprisonment for more than one month, but less than two years**; (c) **after eight years for those punished by imprisonment for two years or more, but less than six years**; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years; *Provided, however,* That all offenses against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months.
>
> Section 2. **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same may not be known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The **prescription shall be interrupted when proceedings are instituted against the guilty person**, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (emphasis supplied)

According to the CA, because no complaint was filed in court within two years after the commission of the alleged violation, the offense had already prescribed.[25]

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[24] Signed by undersecretary Ma. Merceditas N. Gutierrez of the Department of Justice. Dated August 29, 2003. Annex "C", *id.*, pp. 119-120.

Petitioner again moved for reconsideration but it was denied in a resolution dated March 24, 2004. Annex "D", *id.*, pp. 121-122.

[25] *Id.*, p. 57.

On the merits of the case, the CA concluded that the DOJ did not commit grave abuse of discretion in dismissing the petition for review.[26] To be criminally liable for violation of Section 217.3 of the IPC, the following requisites must be present:

1. possession of the infringing copy and
2. knowledge or suspicion that the copy is an infringement of the genuine article.

The CA agreed with the DOJ that petitioner failed to prove that respondent knew that the merchandise he sold was counterfeit. Respondent, on the other hand, was able to show that he obtained these goods from legitimate sources.[27]

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner now essentially avers that the CA erred in concluding that the alleged violations of the IPC had prescribed. Recent jurisprudence holds that the pendency of a preliminary investigation suspends the running of the prescriptive period.[28] Moreover, the CA erred in finding that the DOJ did not commit grave abuse of discretion in dismissing the complaint. Respondent is liable for copyright infringement (even if he obtained his merchandise from legitimate sources) because he sold counterfeit goods.[29]

Although we do not agree wholly with the CA, we deny the petition.

FILING OF THE COMPLAINT IN THE DOJ TOLLED THE PRESCRIPTIVE PERIOD

Section 2 of Act 3326 provides that the prescriptive period for violation of special laws starts on the day such offense was

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[26] *Id.*, p. 58.

[27] *Id.*, pp. 60-61.

[28] *Id.*, pp. 23-29.

[29] *Id.*, pp. 29-40.

committed and is interrupted by the institution of proceedings against respondent (*i.e.*, the accused).

Petitioner in this instance filed its complaint-affidavit on April 4, 2002 or one year, ten months and four days after the NBI searched respondent's premises and seized Sanrio merchandise therefrom. Although no information was immediately filed in court, respondent's alleged violation had not yet prescribed.[30]

In the recent case of *Brillantes v. Court of Appeals*,[31] we affirmed that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility.[32] Thus, the prescriptive period for the prosecution of the alleged violation of the IPC was tolled by petitioner's timely filing of the complaint-affidavit before the TAPP.

IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION, THE FACTUAL FINDINGS OF THE DOJ IN PRELIMINARY INVESTIGATIONS WILL NOT BE DISTURBED

In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof.[33] Probable cause is defined as such facts and circumstances that will engender a

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[30] *See* Act 3326, Sec. 1.

[31] G.R. Nos. 118757 & 121571, 19 October 2004, 440 SCRA 541.

[32] *Id.*, p. 563 *citing People v. Olarte*, 125 Phil. 895 (1967).

[33] RULES OF COURT, Rule 112, Sec. 1. The section provides:

Section 1. *Preliminary investigation defined; when required.* **Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial**.

Except as provided in Section 6 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed is at least four (4) years, two (2) months and one (1) day without regard to the fine. (emphasis supplied)

well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.[34] Because a public prosecutor is the one conducting a preliminary investigation, he determines the existence of probable cause.[35] Consequently, the decision to file a criminal information in court or to dismiss a complaint depends on his sound discretion.[36]

As a general rule, a public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. For this reason, courts generally do not interfere with the results of such proceedings. A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of a criminal information against the respondent.[37] By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion.[38] Otherwise stated, such review is appropriate only when the prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[39]

The prosecutors in this case consistently found that no probable cause existed against respondent for violation of the IPC. They were in the best position to determine whether or not there was

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[34] *Baviera v. Paglinawan,* G.R. No. 170602, 8 February 2007, 515 SCRA 170, 184 *citing Pontejos v. Office of the Ombudsman,* G.R. Nos. 158613-14, 22 February 2006, 483 SCRA 83, 92.

[35] *Id.,* at 184.

[36] *Id*.

[37] *Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik,* G.R. No. 166924, 17 August 2006, 499 SCRA 268, 272-273 *citing Punzalan v. de la Pena,* G.R. No. 158543, 21 July 2004, 434 SCRA 601.

[38] *Id.* at 273 *citing Cabahug v. People,* 426 Phil. 490 (2002).

[39] *Id., citing Baylon v. Office of the Ombudsman and the Sandiganbayan,* 423 Phil. 705 (2001).

probable cause. We find that they arrived at their findings after carefully evaluating the respective evidence of petitioner and respondent. Their conclusion was not tainted with grave abuse of discretion.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Azcuna, and *Leonardo-de Castro, JJ.,* concur.

Sandoval-Gutierrez, J., took no part. Her daughter, a Senior State Prosecutor from the DOJ, issued the initial Res.

THIRD DIVISION

[G.R. No. 170115. February 19, 2008]

PROVINCE OF CEBU, *petitioner, vs*. **HEIRS OF RUFINA MORALES, NAMELY: FELOMINA V. PANOPIO, NENITA VILLANUEVA, ERLINDA V. ADRIANO and CATALINA V. QUESADA,** *respondents*.

SYLLABUS

1. CIVIL LAW; SALES; CONTRACT OF SALE; ELEMENTS THEREOF, PRESENT. — Consequently, there was a meeting of minds between the City of Cebu and Morales as to the lot sold and its price, such that each party could reciprocally demand performance of the contract from the other. A contract of sale is a consensual contract and is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance subject to the

provisions of the law governing the form of contracts. The elements of a valid contract of sale under Article 1458 of the Civil Code are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent. All these elements were present in the transaction between the City of Cebu and Morales.

2. ID.; ID.; ID.; A CONTRACT OF SALE IS PERFECTED REGARDLESS OF THE ABSENCE OF A FORMAL DEED EVIDENCING THE SAME. — A contract of sale is a consensual contract that is perfected upon a meeting of minds as to the object of the contract and its price. Subject to the provisions of the Statute of Frauds, a formal document is not necessary for the sale transaction to acquire binding effect. For as long as the essential elements of a contract of sale are proved to exist in a given transaction, the contract is deemed perfected regardless of the absence of a formal deed evidencing the same.

3. ID.; ID.; ID.; FAILURE TO PAY THE BALANCE OF THE PURCHASE PRICE DID NOT ABOLISH THE CONTRACT OF SALE OR RESULT IN ITS AUTOMATIC INVALIDATION. — Similarly, petitioner erroneously contends that the failure of Morales to pay the balance of the purchase price is evidence that there was really no contract of sale over the lot between Morales and the City of Cebu. On the contrary, the fact that there was an agreed price for the lot proves that a contract of sale was indeed perfected between the parties. Failure to pay the balance of the purchase price did not render the sale inexistent or invalid, but merely gave rise to a right in favor of the vendor to either demand specific performance or rescission of the contract of sale. It did not abolish the contract of sale or result in its automatic invalidation.

4. ID.; ID.; ID.; STAGES OF A CONTRACT OF SALE. — The stages of a contract of sale are as follows: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale which are the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins

when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.

5. ID.; ID.; ID.; VENDEE CAN STILL TENDER PAYMENT OF THE FULL PURCHASE PRICE AS LONG AS NO DEMAND FOR RESCISSION HAS BEEN MADE BY THE VENDOR. — Respondents could still tender payment of the full purchase price as no demand for rescission had been made upon them, either judicially or through notarial act. While it is true that it took a long time for respondents to bring suit for specific performance and consign the balance of the purchase price, it is equally true that petitioner or its predecessor did not take any action to have the contract of sale rescinded. Article 1592 allows the vendee to pay as long as no demand for rescission has been made. The consignation of the balance of the purchase price before the trial court thus operated as full payment, which resulted in the extinguishment of respondents' obligation under the contract of sale.

APPEARANCES OF COUNSEL

Cebu Provincial Legal Office for petitioner.
Diores Law Offices for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals dated March 29, 2005 in CA-G.R. CV No. 53632, which affirmed *in toto* the Decision[2] of the Regional Trial Court of Cebu City, Branch 6, in Civil Case No. CEB-11140 for specific performance and reconveyance of property. Also assailed is the Resolution[3] dated August 31, 2005 denying the motion for reconsideration.

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[1] *Rollo*, pp. 26-32.

[2] *Id*. at 33-36.

[3] *Id*. at 37-38.

On September 27, 1961, petitioner Province of Cebu leased[4] in favor of Rufina Morales a 210-square meter lot which formed part of Lot No. 646-A of the Banilad Estate. Subsequently or sometime in 1964, petitioner donated several parcels of land to the City of Cebu. Among those donated was Lot No. 646-A which the City of Cebu divided into sub-lots. The area occupied by Morales was thereafter denominated as Lot No. 646-A-3, for which Transfer Certificate of Title (TCT) No. 30883[5] was issued in favor of the City of Cebu.

On July 19, 1965, the city sold Lot No. 646-A-3 as well as the other donated lots at public auction in order to raise money for infrastructure projects. The highest bidder for Lot No. 646-A-3 was Hever Bascon but Morales was allowed to match the highest bid since she had a preferential right to the lot as actual occupant thereof.[6] Morales thus paid the required deposit and partial payment for the lot.[7]

In the meantime, petitioner filed an action for reversion of donation against the City of Cebu docketed as Civil Case No. 238-BC before Branch 7 of the then Court of First Instance of Cebu. On May 7, 1974, petitioner and the City of Cebu entered into a compromise agreement which the court approved on July 17, 1974.[8] The agreement provided for the return of the donated lots to petitioner except those that have already been utilized by the City of Cebu. Pursuant thereto, Lot No. 646-A-3 was returned to petitioner and registered in its name under TCT No. 104310.[9]

Morales died on February 20, 1969 during the pendency of Civil Case No. 238-BC.[10] Apart from the deposit and down

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[4] *Id*. at 39-41.

[5] RTC Records, pp. 8-9.

[6] *Id*. at 119.

[7] *Id*. at 12.

[8] *Id*. at 134-141.

[9] *Id*. at 15.

[10] *Id*. at 105.

payment, she was not able to make any other payments on the balance of the purchase price for the lot.

On March 11, 1983, one of the nieces of Morales, respondent Catalina V. Quesada, wrote to then Cebu Governor Eduardo R. Gullas asking for the formal conveyance of Lot No. 646-A-3 to Morales' surviving heirs, in accordance with the award earlier made by the City of Cebu.[11] This was followed by another letter of the same tenor dated October 10, 1986 addressed to Governor Osmundo G. Rama.[12]

The requests remained unheeded thus, Quesada, together with the other nieces of Morales namely, respondents Nenita Villanueva and Erlinda V. Adriano, as well as Morales' sister, Felomina V. Panopio, filed an action for specific performance and reconveyance of property against petitioner, which was docketed as Civil Case No. CEB-11140 before Branch 6 of the Regional Trial Court of Cebu City.[13] They also consigned with the court the amount of ₱13,450.00 representing the balance of the purchase price which petitioner allegedly refused to accept.[14]

Panopio died shortly after the complaint was filed.[15]

Respondents averred that the award at public auction of the lot to Morales was a valid and binding contract entered into by the City of Cebu and that the lot was inadvertently returned to petitioner under the compromise judgment in Civil Case No. 238-BC. They alleged that they could not pay the balance of the purchase price during the pendency of said case due to confusion as to whom and where payment should be made. They thus prayed that judgment be rendered ordering petitioner to execute a final deed of absolute sale in their favor, and that TCT No. 104310 in the name of petitioner be cancelled.[16]

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[11] *Id*. at 130.

[12] *Id*. at 131.

[13] *Id*. at 1-6.

[14] *Id*. at 125.

[15] *Id*. at 133.

[16] *Id*. at 4-5.

Petitioner filed its answer but failed to present evidence despite several opportunities given thus, it was deemed to have waived its right to present evidence.[17]

On March 6, 1996, the trial court rendered judgment, the dispositive part of which reads:

> WHEREFORE, judgment is rendered in favor of the plaintiffs and against the defendant Province of Cebu, hereby directing the latter to convey Lot 646-A-3 to the plaintiffs as heirs of Rufina Morales, and in this connection, to execute the necessary deed in favor of said plaintiffs.
>
> No pronouncement as to costs.
>
> SO ORDERED.[18]

In ruling for the respondents, the trial court held thus:

> [T]he Court is convinced that there was already a consummated sale between the City of Cebu and Rufina Morales. There was the offer to sell in that public auction sale. It was accepted by Rufina Morales with her bid and was granted the award for which she paid the agreed downpayment. It cannot be gainsaid that at that time the owner of the property was the City of Cebu. It has the absolute right to dispose of it thru that public auction sale. The donation by the defendant Province of Cebu to Cebu City was not voided in that Civil Case No. 238-BC. The compromise agreement between the parties therein on the basis of which judgment was rendered did not provide nullification of the sales or disposition made by the City of Cebu. Being virtually successor-in-interest of City of Cebu, the defendant is bound by the contract lawfully entered into by the former. Defendant did not initiate any move to invalidate the sale for one reason or another. Hence, it stands as a perfectly valid contract which defendant must respect. Rufina Morales had a vested right over the property. The plaintiffs being the heirs or successors-in-interest of Rufina Morales, have the right to ask for the conveyance of the property to them. While it may be true that the title of the property still remained in the name of the City of Cebu until full payment is made, and this could be the reason why the lot in question was among

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[17] *Id*. at 143.

[18] *Rollo*, p. 36.

those reverted to the Province, the seller's obligation under the contract was, for all legal purposes, transferred to, and assumed by, the defendant Province of Cebu. It is then bound by such contract.[19]

Petitioner appealed to the Court of Appeals which affirmed the decision of the trial court *in toto*. Upon denial of its motion for reconsideration, petitioner filed the instant petition under Rule 45 of the Rules of Court, alleging that the appellate court erred in:

FINDING THAT RUFINA MORALES AND RESPONDENTS, AS HER HEIRS, HAVE THE RIGHT TO EQUAL THE BID OF THE HIGHEST BIDDER OF THE SUBJECT PROPERTY AS LESSEES THEREOF;

FINDING THAT WITH THE DEPOSIT AND PARTIAL PAYMENT MADE BY RUFINA MORALES, THE SALE WAS IN EFFECT CLOSED FOR ALL LEGAL PURPOSES, AND THAT THE TRANSACTION WAS PERFECTED AND CONSUMMATED;

FINDING THAT LACHES AND/OR PRESCRIPTION ARE NOT APPLICABLE AGAINST RESPONDENTS;

FINDING THAT DUE TO THE PENDENCY OF CIVIL CASE NO. 238-BC, PLAINTIFFS WERE NOT ABLE TO PAY THE AGREED INSTALLMENTS;

AFFIRMING THE DECISION OF THE TRIAL COURT IN FAVOR OF THE RESPONDENTS AND AGAINST THE PETITIONERS.[20]

The petition lacks merit.

The appellate court correctly ruled that petitioner, as successor-in-interest of the City of Cebu, is bound to respect the contract of sale entered into by the latter pertaining to Lot No. 646-A-3. The City of Cebu was the owner of the lot when it awarded the same to respondents' predecessor-in-interest, Morales, who later became its owner before the same was erroneously returned to petitioner under the compromise judgment. The award is tantamount to a perfected contract of sale between Morales and the City of Cebu, while partial payment of the purchase price and actual occupation of the property by Morales and

[19] *Id*. at 35-36.

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

respondents effectively transferred ownership of the lot to the latter. This is true notwithstanding the failure of Morales and respondents to pay the balance of the purchase price.

Petitioner can no longer assail the award of the lot to Morales on the ground that she had no right to match the highest bid during the public auction. Whether Morales, as actual occupant and/or lessee of the lot, was qualified and had the right to match the highest bid is a foregone matter that could have been questioned when the award was made. When the City of Cebu awarded the lot to Morales, it is assumed that she met all qualifications to match the highest bid. The subject lot was auctioned in 1965 or more than four decades ago and was never questioned. Thus, it is safe to assume, as the appellate court did, that all requirements for a valid public auction sale were complied with.

A sale by public auction is perfected "when the auctioneer announces its perfection by the fall of the hammer or in other customary manner."[21] It does not matter that Morales merely matched the bid of the highest bidder at the said auction sale. The contract of sale was nevertheless perfected as to Morales, since she merely stepped into the shoes of the highest bidder.

Consequently, there was a meeting of minds between the City of Cebu and Morales as to the lot sold and its price, such that each party could reciprocally demand performance of the contract from the other.[22] A contract of sale is a consensual contract and is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance subject to the provisions of the law governing the form of contracts. The elements of a valid contract of sale under Article 1458 of the Civil Code are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[23] All these elements were present in the transaction between the City of Cebu and Morales.

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[21] CIVIL CODE, Art. 1476(2).

[22] *Id.*, Art. 1475.

[23] *City of Cebu v. Heirs of Candido Rubi*, 366 Phil. 70, 78 (1999).

There is no merit in petitioner's assertion that there was no perfected contract of sale because no "Contract of Purchase and Sale" was ever executed by the parties. As previously stated, a contract of sale is a consensual contract that is perfected upon a meeting of minds as to the object of the contract and its price. Subject to the provisions of the Statute of Frauds, a formal document is not necessary for the sale transaction to acquire binding effect.[24] For as long as the essential elements of a contract of sale are proved to exist in a given transaction, the contract is deemed perfected regardless of the absence of a formal deed evidencing the same.

Similarly, petitioner erroneously contends that the failure of Morales to pay the balance of the purchase price is evidence that there was really no contract of sale over the lot between Morales and the City of Cebu. On the contrary, the fact that there was an agreed price for the lot proves that a contract of sale was indeed perfected between the parties. Failure to pay the balance of the purchase price did not render the sale inexistent or invalid, but merely gave rise to a right in favor of the vendor to either demand specific performance or rescission of the contract of sale.[25] It did not abolish the contract of sale or result in its automatic invalidation.

As correctly found by the appellate court, the contract of sale between the City of Cebu and Morales was also partially consummated. The latter had paid the deposit and downpayment for the lot in accordance with the terms of the bid award. She first occupied the property as a lessee in 1961, built a house thereon and was continuously in possession of the lot as its owner until her death in 1969. Respondents, on the other hand, who are all surviving heirs of Morales, likewise occupied the

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[24] Article 1483 of the Civil Code states:

Art. 1483. Subject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

[25] *Buenaventura v. Court of Appeals*, 461 Phil. 761, 772 (2003).

property during the latter's lifetime and continue to reside on the property to this day.[26]

The stages of a contract of sale are as follows: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale which are the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.[27] In this case, respondents' predecessor had undoubtedly commenced performing her obligation by making a down payment on the purchase price. Unfortunately, however, she was not able to complete the payments due to legal complications between petitioner and the city.

Thus, the City of Cebu could no longer dispose of the lot in question when it was included as among those returned to petitioner pursuant to the compromise agreement in Civil Case No. 238-BC. The City of Cebu had sold the property to Morales even though there remained a balance on the purchase price and a formal contract of sale had yet to be executed. Incidentally, the failure of respondents to pay the balance on the purchase price and the non-execution of a formal agreement was sufficiently explained by the fact that the trial court, in Civil Case No. 238-BC, issued a writ of preliminary injunction enjoining the city from further disposing the donated lots. According to respondents, there was confusion as to the circumstances of payment considering that both the city and petitioner had refused to accept payment by virtue of the injunction.[28] It appears that the parties simply mistook Lot 646-A-3 as among those not yet sold by the city.

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[26] TSN, August 12, 1994, pp. 11 and 36.

[27] *San Miguel Properties Phils., Inc. v. Spouses Huang*, 391 Phil. 636, 645 (2000).

[28] TSN, August 12, 1994, p. 32.

The City of Cebu was no longer the owner of Lot 646-A-3 when it ceded the same to petitioner under the compromise agreement in Civil Case No. 238-BC. At that time, the city merely retained rights as an unpaid seller but had effectively transferred ownership of the lot to Morales. As successor-in-interest of the city, petitioner could only acquire rights that its predecessor had over the lot. These rights include the right to seek rescission or fulfillment of the terms of the contract and the right to damages in either case.[29]

In this regard, the records show that respondent Quesada wrote to then Cebu Governor Eduardo R. Gullas on March 11, 1983, asking for the formal conveyance of Lot 646-A-3 pursuant to the award and sale earlier made by the City of Cebu. On October 10, 1986, she again wrote to Governor Osmundo G. Rama reiterating her previous request. This means that petitioner had known, at least as far back as 1983, that the city sold the lot to respondents' predecessor and that the latter had paid the deposit and the required down payment. Despite this knowledge, however, petitioner did not avail of any rightful recourse to resolve the matter.

Article 1592 of the Civil Code pertinently provides:

Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term. (Underscoring supplied)

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[29] Article 1191 of the Civil Code states:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

Thus, respondents could still tender payment of the full purchase price as no demand for rescission had been made upon them, either judicially or through notarial act. While it is true that it took a long time for respondents to bring suit for specific performance and consign the balance of the purchase price, it is equally true that petitioner or its predecessor did not take any action to have the contract of sale rescinded. Article 1592 allows the vendee to pay as long as no demand for rescission has been made.[30] The consignation of the balance of the purchase price before the trial court thus operated as full payment, which resulted in the extinguishment of respondents' obligation under the contract of sale.

Finally, petitioner cannot raise the issue of prescription and laches at this stage of the proceedings. Contrary to petitioner's assignment of errors, the appellate court made no findings on the issue because petitioner never raised the matter of prescription and laches either before the trial court or Court of Appeals. It is basic that defenses and issues not raised below cannot be considered on appeal.[31] Thus, petitioner cannot plead the matter for the first time before this Court.

WHEREFORE, in view of the foregoing, the petition is hereby *DENIED* and the decision and resolution of the Court of Appeals in CA-G.R. CV No. 53632 are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Corona,[*] *Nachura,* and *Reyes, JJ.*, concur.

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[30] See note 23 at 83.

[31] *Ramos v. Sarao*, G.R. No. 149756, February 11, 2005, 451 SCRA 103, 122.

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

EN BANC

[G.R. No. 172970. February 19, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARK JASON JAVIER *y* AMANTE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SUFFICIENT FOR CONVICTION IN CASE AT BAR. — The combination of the following circumstances is sufficient to convict appellant of the crime charged: 1. Appellant and BBB were having a drinking spree at BBB's house, where AAA was sleeping; 2. While BBB left to check on his sow that was about to give birth, appellant was left in the house; 3. When BBB returned to his house, appellant and AAA were no longer there; 4. BBB, PO3 Tagala, and their other companions found appellant naked and sleeping inside one of the locked classrooms of Capacuan Primary School; 5. AAA was also found sleeping a few meters from appellant. AAA was wearing a dress but she had no underwear. There was blood oozing out of AAA's private organ; 6. The medical examination of AAA, conducted on the same day, showed that there were positive blood clots on AAA's perennial area, a 3cm. laceration at 6 o'clock position of her vagina, and edema of her *labia majora* and that her vagina can easily admit two fingers. Considered as a whole, they constitute an unbroken chain leading to one fair and reasonable conclusion — that appellant had carnal knowledge of AAA.

2. CRIMINAL LAW; QUALIFIED RAPE, COMMITTED IN CASE AT BAR. — In criminal law, proof beyond reasonable doubt does not mean such degree of proof that produces absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. This was sufficiently established in this case.

3. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT, ESTABLISHED. — The prosecution also established that the crime committed was qualified rape because AAA was then a child below seven years old. During the trial, the prosecution proved that AAA was born on 24 March 1996 and

appellant committed the rape on 30 November 2002. Therefore, AAA was only 6 years and 8 months old when appellant committed the crime.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO, *J.*:

This is an appeal from the 19 April 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00433. The Court of Appeals affirmed with modification the 17 November 2004 Decision[2] of the Regional Trial Court, Branch 12, Sanchez Mira, Cagayan finding appellant Mark Jason Javier *y* Amante guilty beyond reasonable doubt of qualified rape.

On 27 June 2003, the prosecution charged appellant with raping AAA, who was alleged to be six years old at the time of the commission of the crime.

Appellant pleaded not guilty upon arraignment.

During the trial, the prosecution proved that AAA was born on 24 March 1996. BBB, AAA's father, testified that on the evening of 30 November 2002, he and appellant had a drinking spree at their house. AAA was then sleeping. While BBB went to check on his sow which was about to give birth, appellant offered to buy more gin. When BBB returned home, AAA and appellant were no longer there. BBB sought the help of Ricardo Rivera, Gil Buenavista (Buenavista), Eddie Rivera, and PO3 Silvestre Tagala (PO3 Tagala) to look for AAA. They found

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[1] *Rollo*, pp. 2-14. Penned by Associate Justice Eliezer R. de los Santos with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring.

[2] CA *rollo*, pp. 10-15. Penned by Judge Leo S. Reyes.

appellant naked and sleeping inside one of the classrooms of Capacuan Primary School. AAA was also found sleeping a few meters from appellant. AAA was wearing a dress but without any underwear. There was blood oozing out of AAA's private organ. PO3 Tagala corroborated BBB's testimony.

Dr. Madeliza Padama-Callangan (Dr. Padama-Callangan), the medico-legal officer who examined AAA on the same day, testified that there were positive blood clots on AAA's perennial area, a 3cm. laceration at 6 o'clock position of her vagina, and edema of her labia majora and that AAA's vagina could easily admit two fingers.

Appellant admitted that on the evening of 30 November 2002 he had a drinking spree with BBB. However, appellant alleged that BBB asked AAA to accompany appellant when he went out to buy more gin. Upon returning to BBB's house and finding BBB asleep, appellant left AAA and he went to see Buenavista, his employer. Appellant claimed that he slept in Buenavista's house. Appellant denied raping AAA.

On 17 November 2004, the trial court rendered its decision finding appellant guilty of rape under Articles 266-A (1)(d) and 266-B (1) of the Revised Penal Code, as amended by Republic Act No. 8353. The trial court sentenced appellant to death by lethal injection, to pay AAA ₱80,000 as civil indemnity, ₱100,000 as moral damages, and ₱100,000 as exemplary damages.

The trial court found the testimonies of BBB, PO3 Tagala, and Dr. Padama-Callangan sufficient to warrant appellant's conviction. The trial court did not give credence to appellant's denial and alibi. The trial court held that appellant's defense was completely destroyed by the consistent sequence of events as narrated by BBB and PO3 Tagala and the medical findings of Dr. Padama-Callangan.

On appeal, appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt. Appellant contended that there was no direct evidence to show that he committed the crime charged and that his conviction was based on suspicion and surmises.

In its 19 April 2006 Decision, the Court of Appeals affirmed with modification the trial court's decision finding appellant guilty of qualified rape under Articles 266-A (1)(d) and 266-B (5) and reduced the award for civil indemnity to ₱75,000, moral damages to ₱50,000 and exemplary damages to ₱25,000.

Hence, this appeal.

We find the appeal without merit. The Court of Appeals was correct in affirming the ruling of the trial court that the testimonies of the prosecution witnesses and the other evidence clearly established appellant's commission of the rape. The trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[3] Thus, the trial court's findings are generally binding and conclusive, absent any arbitrariness or oversight of some fact or circumstance of weight and influence.[4]

In this case, AAA, the victim, was not able to testify. The evidence of the prosecution is undeniably circumstantial in nature. As provided in Section 4, Rule 133 of the Revised Rules on Evidence, circumstantial evidence is sufficient for conviction if (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.

The combination of the following circumstances is sufficient to convict appellant of the crime charged:

1. Appellant and BBB were having a drinking spree at BBB's house, where AAA was sleeping;
2. While BBB left to check on his sow that was about to give birth, appellant was left in the house;

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[3] *People v. Oliquino*, G.R. No. 171314, 6 March 2007, 517 SCRA 579; *People v. Diunsay-Jalandoni*, G.R. No. 174277, 8 February 2007, 515 SCRA 227; *Navarrete v. People*, G.R. No. 147913, 31 January 2007, 513 SCRA 509.

[4] *People v. Arnaiz*, G.R. No. 171447, 29 November 2006, 508 SCRA 630; *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651.

3. When BBB returned to his house, appellant and AAA were no longer there;

4. BBB, PO3 Tagala, and their other companions found appellant naked and sleeping inside one of the locked classrooms of Capacuan Primary School;

5. AAA was also found sleeping a few meters from appellant. AAA was wearing a dress but she had no underwear. There was blood oozing out of AAA's private organ;

6. The medical examination of AAA, conducted on the same day, showed that there were positive blood clots on AAA's perennial area, a 3cm. laceration at 6 o'clock position of her vagina, and edema of her labia majora and that her vagina can easily admit two fingers.

Considered as a whole, they constitute an unbroken chain leading to one fair and reasonable conclusion — that appellant had carnal knowledge of AAA.

The prosecution also established that the crime committed was qualified rape because AAA was then a child below seven years old. During the trial, the prosecution proved that AAA was born on 24 March 1996 and appellant committed the rape on 30 November 2002. Therefore, AAA was only 6 years and 8 months old when appellant committed the crime.

In criminal law, proof beyond reasonable doubt does not mean such degree of proof that produces absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[5] This was sufficiently established in this case.

Republic Act No. 9346[6] now prohibits the imposition of the death penalty. Thus, the penalty of *reclusion perpetua* should be imposed, without eligibility for parole. Moreover, the award

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[5] *People v. Guarnes*, G.R. No. 65175, 15 April 1988, 160 SCRA 522.

[6] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

of moral damages should be increased from ₱50,000 to ₱75,000 in accordance with prevailing jurisprudence.[7]

WHEREFORE, we *AFFIRM* the 19 April 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00433 finding appellant Mark Jason Javier *y* Amante guilty beyond reasonable doubt of qualified rape with the *MODIFICATION* that the penalty is reduced to *reclusion perpetua* and the moral damages increased to ₱75,000.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. No. 175275. February 19, 2008]

EMILIO CAMPOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF OF GUILT; THREE WELL-ENTRENCHED PRINCIPLES IN DETERMINING THE INNOCENCE OR GUILT OF THE ACCUSED IN RAPE CASES, REITERATED. — In determining the innocence or guilt of the accused in rape cases, the courts are guided by

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[7] *People v. Jalbuena*, G.R. No. 171163, 4 July 2007, 526 SCRA 500; *People v. Villanueva*, G.R. No. 169643, 13 April 2007, 521 SCRA 236; *People v. Pangilinan*, G.R. No. 171020, 14 March 2007, 518 SCRA 358; *People v. Sambrano*, 446 Phil. 145 (2003); *People v. Soriano*, 436 Phil. 719 (2002).

three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. The credibility of the complainant is, therefore, of vital importance, for in view of the peculiar nature of rape, conviction or acquittal of the accused depends almost entirely upon the word of the private complainant.

2. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT THEIR TESTIMONY. — She also wept uncontrollably and narrated in an unequivocal manner the four other instances of sexual abuse committed on December 6, 7, 8 and 9, 2001. Time and again, we have 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. Moreover, a rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true.

3. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION; NOT SHOWN. — Appellant failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission. He failed to establish the distance from his house to where he played a card game on the night of December 5, 2001. On December 6, 7 and 8, 2001, he allegedly stayed in Maribel's house which is only six meters away from his house. Meanwhile, the *bahay kubo* where he allegedly slept on December 9, 2001, is located just behind his house. Considering the short distances from the scene of the crime, it is clear that appellant's defense of alibi is unavailing.

4. CRIMINAL LAW; RAPE; QUALIFIED RAPE; LACK OF TENACIOUS RESISTANCE AND FAILURE TO REPORT THE ABUSE DO NOT NEGATE THE COMMISSION OF INCESTUOUS RAPE. — In rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires, and no further proof need be shown to prove lack of the victim's consent to her own defilement. Further, resistance is not an element of rape and the absence thereof is not tantamount to consent. If resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary. AAA's lack of tenacious resistance and failure to immediately report the sexual abuse were caused by overwhelming fear of her father. She was only 14-years old when the incidents took place and she described appellant as cruel and ill-tempered, who would whip her and her siblings for the simplest infractions. Moreover, she tried to prevent him from repeating the sexual abuse by locking the door on the night of December 7, 2001, but her efforts were in vain because he had a key. Thus, she was left with no choice but to suffer in silence in the hands of her father.

APPEARANCES OF COUNSEL

Michael Henry C. Sevilleja and *Eugenio F. Manaois* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review assails the May 30, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00417, which

[1] *Rollo*, pp. 140-150. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo.

affirmed the November 26, 2004 Decision[2] of the Regional Trial Court of Dagupan City, Branch 43 finding appellant Emilio D. Campos guilty of five counts of qualified rape committed against his 14-year old daughter, AAA.[3] Also assailed is the August 2, 2006 Resolution[4] denying the motion for reconsideration.

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[2] *Id*. at 48-70. Penned by Judge Silverio Q. Castillo.

[3] Pursuant to Section 44 of Republic Act No. 9262 (AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES), All records pertaining to cases of violence against women and their children including those in the *barangay* shall be confidential and all public officers and employees and public or private clinics or hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent shall be liable to the contempt power of the court.

Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand Pesos (₱500,000.00).

Section 63, Rule XI of the RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9262 also provides: During the investigation, prosecution and trial of an offense under the Act, law enforcement officials, prosecution, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim-survivor of violence. Law enforcement officers and prosecutors shall conduct closed-door investigations and shall not allow the media to have access to any information regarding the victim-survivor. The adult victim, however, may choose to go public or speak with the media, preferably with the assistance of her counsel.

The *barangay* officials, law enforcers, prosecutors and court personnel shall not disclose the names and personal circumstances of the victim-survivors or complainants or any other information tending to establish their identities to the media or to the public or compromise her identity.

It shall be unlawful for any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television or radio, director and editor of a film in case of the movie industry, or any person utilizing try-media or information technology to cause publicity of the name of identity of the victim-survivor or complainant without her consent. Identities of children shall not in any way be disclosed to the public without the conformity of the DSWD officer of the city or province.

Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand Pesos (₱500,000.00).

[4] *Rollo*, pp. 156-158.

On February 27, 2002, five separate Informations were filed before the Regional Trial Court of Dagupan City, charging appellant with qualified rape, as follows:

CRIMINAL CASE NO. 2002-0154-D

That on or about December 9, 2001 in the evening of Brgy. "G", Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father of herein victim with force, violence, and intimidation, did then and there, willfully and unlawfully and feloniously have sexual intercourse with her [sic] daughter (AAA), a 14-year old minor, against her will and consent to her damage and prejudice.

Contrary to Art. 266-A, par. 1 in relation to Art. 266-B, 6th par. as amended by R.A. 8353.

CRIMINAL CASE NO. 2002-0155-D

That on or about December 8, 2001 in the evening of Brgy. "G", Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father of herein victim with force, violence, and intimidation, did then and there, willfully and unlawfully and feloniously have sexual intercourse with her [sic] daughter (AAA), a 14-year old minor, against her will and consent to her damage and prejudice.

Contrary to Art. 266-A, par. 1 in relation to Art. 266-B, 6th par. as amended by R.A. 8353.

CRIMINAL CASE NO. 2002-0156-D

That on or about December 7, 2001 in the evening of Brgy. "G", Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father of herein victim with force, violence, and intimidation, did then and there, willfully and unlawfully and feloniously have sexual intercourse with her [sic] daughter (AAA), a 14-year old minor, against her will and consent to her damage and prejudice.

Contrary to Art. 266-A, par. 1 in relation to Art. 266-B, 6th par. as amended by R.A. 8353.

CRIMINAL CASE NO. 2002-0157-D

That on or about December 6, 2001 in the evening of Brgy. "G", Mapandan, Pangasinan, Philippines, and within the jurisdiction of

this Honorable Court, the above-named accused, father of herein victim with force, violence, and intimidation, did then and there, willfully and unlawfully and feloniously have sexual intercourse with her [sic] daughter (AAA), a 14-year old minor, against her will and consent to her damage and prejudice.

Contrary to Art. 266-A, par. 1 in relation to Art. 266-B, 6th par. as amended by R.A. 8353.

CRIMINAL CASE NO. 2002-0158-D

That on or about December 5, 2001 in the evening of Brgy. "G", Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father of herein victim with force, violence, and intimidation, did then and there, willfully and unlawfully and feloniously have sexual intercourse with her [sic] daughter (AAA), a 14-year old minor, against her will and consent to her damage and prejudice.

Contrary to Art. 266-A, par. 1 in relation to Art. 266-B, 6th par. as amended by R.A. 8353.

Appellant pleaded not guilty to the charges, after which joint trial of the cases ensued.

AAA testified that in the evening of December 5, 2001, she was asleep inside her bedroom in the family residence at Barangay "G", Mapandan, Pangasinan, when appellant entered the room and lay beside her. She was awakened when appellant started mashing her breast and touching her vagina. Thereafter, he removed her panty, inserted his penis into her vagina, and made push and pull movements. After having engaged her in sexual intercourse, appellant told her not to tell anyone. AAA could not resist and was immobilized with fear of her father, who is cruel and ill-tempered.

Appellant repeated the sexual abuse on December 6, 7, 8 and 9, 2001. AAA tried to deter appellant by locking her bedroom on the night of December 7, 2001. However, he was able to enter using a duplicate key. AAA did not try to resist because she was afraid.

On December 12, 2001, appellant again attempted to rape AAA but was prevented by the arrival of Maribel Francisco, appellant's mistress. Appellant immediately left the room, and

an altercation between him and Maribel ensued. Maribel later brought AAA to the Region I Medical Center for a physical examination.

Dr. Brenda Tumacder, consultant of the Women and Children Protection Unit's Pediatrics Department of Region I Medical Center, testified that AAA's inner vagina had a positive healed laceration at 7 o'clock position which may have been caused by a blunt object, like a penis. She also testified that AAA told her how she was sexually abused by her father and that she was emotionally depressed because of the said incident.

Appellant denied raping AAA. He claimed that on the night of December 5, 2001, he was playing a card game somewhere at the west direction of their house, and went home only the following day, at about 6:00 a.m. On December 6, and 7, 2001, he slept in the house of Maribel who was ill. On December 8, 2001, he and his playmates played *tong-its* at Maribel's house until 5:00 a.m. the following morning. Meanwhile, on December 9, 2001, he claimed to have slept in a *bahay kubo* situated at the back of their house.[5]

Maribel Francisco and Marjorie Campos, AAA's younger sister, corroborated appellant's testimony as to his whereabouts from December 5 to 9, 2001.

On November 26, 2004, the Regional Trial Court rendered a decision finding appellant guilty beyond reasonable doubt of the crime of qualified rape and sentenced him to suffer the penalty of death. Thus:

> WHEREFORE, the Court finds EMILIO D. CAMPOS guilty beyond reasonable doubt for the felony of QUALIFIED RAPE and in conformity with law, he is sentenced to suffer the capital penalty of DEATH in each of the above cases.
>
> The accused is further ordered to pay the victim the following amounts, to wit:
>
> 1. ₱75,000.00 as indemnity
> 2. ₱50,000.00 as moral damages

[5] TSN, June 11, 2003, pp. 8-16.

3. ₱40,000.00 as exemplary damages
4. And costs.

The BJMP-Dagupan City is ordered to commit the person of the accused to the National Bilibid Prison immediately without necessary delay.

SO ORDERED.[6]

Appellant appealed before the Court of Appeals, which affirmed the decision of the Regional Trial Court in its May 30, 2006 Decision, the dispositive portion of which states:

WHEREFORE, the assailed November 26, 2004 Decision of the Regional Trial Court of Dagupan City, Branch 43, in Criminal Case Nos. 2002-0154-D up to 2002-0158-D, is hereby AFFIRMED *in toto.*

SO ORDERED.[7]

Appellant's motion for reconsideration was denied, hence this petition.

Appellant claims there was no evidence showing the presence of force, violence, or intimidation; that the prosecution failed to prove that the sexual acts were committed against the will of AAA; and that AAA's narration is contrary to human experience and natural course of things.

The Office of the Solicitor General argues that appellant's moral ascendancy and influence over AAA may substitute for force, violence and intimidation as an element of rape; that the trial court correctly found that the rapes were committed against AAA's will; and that the trial court was correct in giving weight to the testimony of AAA.

The sole issue for resolution is whether appellant is guilty of the crime of qualified rape.

In determining the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while

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[6] *Rollo,* p. 70.

[7] *Id*. at 150.

the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8] The credibility of the complainant is, therefore, of vital importance, for in view of the peculiar nature of rape, conviction or acquittal of the accused depends almost entirely upon the word of the private complainant.[9]

In the instant case, AAA was forthright and candid in recalling her ordeal, as follows:

Q So, when you went to your bedroom, in order to sleep on December 5, 2001, do you recall if there was any unusual incident that happened to you, Madam Witness?
A Yes, sir.

Q What was that?
A I was raped by my Dad, sir.

Q When you said, you were raped by your Dad, you are referring to Emilio Campos, the accused in this case?
A Yes, sir.

x x x x x x x x x

Q How did your Dad rape you?
A At first my Dad mashed my breast and he touched my vagina after that he removed my lower clothing, sir.

Q When your Dad did that mashing of your breast and touching your vagina, were you already lying down on your bed?
A I was already lying down, sir.

x x x x x x x x x

Q You said that you were asleep when your father entered the room and while inside he mashed your breast, touched your vagina and removed your lower clothing. When you sensed

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[8] *People v. Balonzo*, G.R. No. 176153, September 21, 2007.

[9] *People v. Almanzor*, 433 Phil. 667, 679-680 (2002).

the presence of your father doing these lascivious acts, what was he actually doing?

A He was inserting his penis into my vagina, sir.

x x x x x x x x x

Q Madam Witness, x x x, When you woke up and sense that your father was touching your breast and vagina and pulling down your panty, did you say something to your father? What if any did you say to your father?

A I did not tell him anything because I was frightened, sir.

x x x x x x x x x

Q When your father was inserting his penis into your vagina, where was he at that time in relation to yourself as lying on the bed?
A He was behind me, sir.

Q How did your father insert his penis into your vagina?
A He moved one of my legs and he held his penis and then inserted it into my vagina, sir.

Q Your father was lying beside you at that time he was inserting his penis inside your vagina, is it not?
A Yes, sir.

Q How did he insert his penis into your vagina?
A He held his penis and then he inserted it into my vagina, sir.

x x x x x x x x x

Q After your father inserted his hard penis by the use of his hand into your vagina, what did he do next?
A He sucked my breast, sir.

x x x x x x x x x

Q After your father engaged you in sexual intercourse by doing the push and pull movement, what else did your father do?
A He licked my organ, sir.[10]

She also wept uncontrollably and narrated in an unequivocal manner the four other instances of sexual abuse committed on

[10] TSN, April 24, 2002, pp. 11-18.

December 6, 7, 8 and 9, 2001.[11] Time and again, we have 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.[12]

Moreover, a rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true.[13] Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.[14]

Besides, AAA's testimony was corroborated by the medical findings of Dr. Tumacder, who declared to have found a positive healed hymenal laceration at 7 o'clock position which could have been caused by a blunt source or penetrating trauma such as a penis.[15] Thus, when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has been established.[16]

Appellant, on the other hand, merely relied on the defense of denial and alibi. He testified that he was at the west direction of their house on December 5, 2001. On December 6, 7, and

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[11] TSN, April 24, 2002, pp. 21-27; April 24, 2002, p. 19; April 29, 2001, pp. 2-12.

[12] *People v. Lor*, 413 Phil. 725, 737 (2001); *People v. Cariño*, 414 Phil. 577, 586 (2001); *People v. Surilla*, 391 Phil. 257, 267 (2000).

[13] *People v. Pecayo, Sr.*, 401 Phil. 239, 250 (2000).

[14] *People v. Balonzo, supra* note 8.

[15] TSN, April 17, 2002, pp. 12-14.

[16] *People v. Muros*, G.R. No. 142511, February 16, 2004, 423 SCRA 69, 81.

8, 2001, he stayed in Maribel's house, while on December 9, 2001, he slept in a *bahay kubo* behind their house. Thus, he could not have committed the offenses charged against him.

It must be emphasized that while denial and alibi are legitimate defenses in rape cases, bare assertions thereof cannot overcome the categorical testimony of the victim.[17] For the defense of alibi to prosper, the accused must not only prove his presence at another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the *locus criminis* at the time of the commission of the crime.[18] In *People v. Grefaldia*,[19] we held:

> Alibi is one of the weakest defenses. It is easy to fabricate and difficult to disprove. For the defense of alibi to prosper, the accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed. Appellant failed to conclusively show that it was physically impossible for him to be at the scene of the crime at the time of its commission.[20]

Appellant failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission. He failed to establish the distance from his house to where he played a card game on the night of December 5, 2001. On December 6, 7 and 8, 2001, he allegedly stayed in Maribel's house which is only six meters away from his house.[21] Meanwhile, the *bahay kubo* where he allegedly slept on December 9, 2001, is located just behind his house. Considering the short distances from the scene of the crime, it is clear that appellant's defense of alibi is unavailing.

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[17] *People v. Cachapero*, G.R. No. 153008, May 20, 2004, 428 SCRA 744, 757.

[18] *People v. Mercado*, 419 Phil. 534, 543 (2001).

[19] G.R. No. 121637, April 30, 2003, 402 SCRA 153.

[20] *Id*. at 166.

[21] TSN, February 10, 2003, pp. 6-7.

Likewise, there is no merit to appellant's claim that there is no evidence of force, violence or intimidation, and that the prosecution failed to prove that the sexual acts were committed against AAA's will.

In rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation.[22] The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires,[23] and no further proof need be shown to prove lack of the victim's consent to her own defilement.[24]

Further, resistance is not an element of rape and the absence thereof is not tantamount to consent. If resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary.[25]

AAA's lack of tenacious resistance and failure to immediately report the sexual abuse were caused by overwhelming fear of her father. She was only 14-years old when the incidents took place and she described appellant as cruel and ill-tempered, who would whip her and her siblings for the simplest infractions. Moreover, she tried to prevent him from repeating the sexual abuse by locking the door on the night of December 7, 2001, but her efforts were in vain because he had a key.[26] Thus, she was left with no choice but to suffer in silence in the hands of her father. Such is not uncommon behavior in rape cases, especially incestuous rapes, where the fear which compels non-revelation

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[22] *People v. Javier*, 370 Phil. 128, 146 (1999).

[23] *People v. Orillosa*, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[24] *People v. Limio*, G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597, 613.

[25] *People v. Dizon*, 419 Phil. 703, 714 (2001).

[26] *Rollo*, p. 146.

is further reinforced by the moral ascendancy of the rapist over his ravished relative.[27]

Indeed, it takes extraordinary courage in a child to break her silence and expose herself and her family to the stigma that incestuous rape brings. The fact that AAA braved the grueling trial to prosecute her father speaks volumes of the truth of her assertions. In *People v. Capareda*,[28] we held:

> Established is the rule that the testimonies of rape victims, especially child victims, are given full weight and credit. It bears emphasis that the victim was barely thirteen when she was raped. In a litany of cases, this Court has applied the well-settled rule that when a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to prove that rape was committed, for as long as her testimony meets the test of credibility. No young girl, indeed, would concoct a sordid tale of so serious a crime as rape at the hands of a close kin, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than an earnest desire to seek justice. This holds true especially where the complainant is a minor, whose testimony deserves full credence.[29]

The facts and evidence conclusively show that appellant is guilty of the charges against him. Thus, we find no cogent reason to depart from the findings of the trial court, as affirmed by the Court of Appeals.

On the penalty imposed on appellant, Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines" was signed into law on June 24, 2006. It provides:

> SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed.

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[27] *People v. Gomez*, 419 Phil. 732, 738-739 (2001).

[28] G.R. No. 128363, May 27, 2004, 429 SCRA 301.

[29] *Id*. at 323-324.

Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Thus, appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole under the Indeterminate Sentence Law,[30] instead of death.

As regards the award of damages, we affirm the award of civil indemnity in the amount of ₱75,000.00, and exemplary damages of ₱40,000.00. However, the award of moral damages in the amount of ₱50,000.00 is increased to ₱75,000.00 pursuant to prevailing jurisprudence.[31]

WHEREFORE, the petition is *DENIED*. The May 30, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00417 finding appellant Emilio D. Campos guilty beyond reasonable doubt of five counts of qualified rape is *AFFIRMED* with the following *MODIFICATIONS*:

1. Appellant is sentenced to suffer the penalty of *reclusion perpetua* in each case without the benefit of parole;

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[30] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481, 503.

[31] *People v. Balonzo*, *supra* note 8, citing *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275, 292-293.

2. The award of moral damages in each case is increased from ₱50,000.00 to ₱75,000.00.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 175960. February 19, 2008]

PADILLA MACHINE SHOP, RODOLFO PADILLA and LEONARDO PADILLA, *petitioners, vs.* **RUFINO A. JAVILGAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; THE BURDEN OF PROOF IS ON THE EMPLOYER TO SHOW THAT THE EMPLOYEE WAS DISMISSED FOR A VALID AND JUST CAUSE. — Petitioners did not offer any evidence to disprove the allegation that Rodolfo Padilla informed Javilgas by phone to stop reporting to work. On the contrary, Rodolfo admitted that he "advised" Javilgas to "concentrate on his (Javilgas') shop if he has no more time for the company (Padilla Machine Shop)." Moreover, it was only in the NLRC that the documents and photographs purporting to show that Javilgas was conducting business inimical to the interests of Padilla Machine Shop were submitted. In illegal dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for

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[*] Vice Associate Justice Antonio Eduardo B. Nachura, per Raffle dated February 13, 2008. Justice Nachura previously participated in this case as Solicitor General.

a valid and just cause. Petitioners have failed to discharge themselves of the burden. With respect to Javilgas' claim of illegal dismissal, petitioners merely alleged that — 13. From that time on, Complainant (Javilgas), did not anymore report for work and left Respondent's (Rodolfo) business for the second time without any advance notice of terminating his services as required by law; 14. This Complainant requested Respondent to compute all the SSS/Medicare deductions on his weekly/daily salaries for he is planning to have a refund of these deductions; x x x Petitioner Rodolfo, however, did not elaborate or show proof of the claimed abandonment. Instead, he concluded that Javilgas "abandoned his corresponding duties and responsibilities x x x when he established and created his own machine shop outfit x x x."

2. ID.; ID.; ID.; REQUISITES OF ABANDONMENT TO BE A VALID CAUSE FOR DISMISSAL. — For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. The establishment of his own shop is not enough proof that Javilgas intended to sever his relationship with his employer.

3. ID.; ID.; ID.; DENIAL BY THE EMPLOYER THAT HE DISMISSED HIS EMPLOYEE MUST BE COUPLED WITH EVIDENCE TO SUPPORT IT. — Petitioners, in like manner, consistently deny that Javilgas was dismissed from service; that he abandoned his employment when he walked out after his conversation with Rodolfo and never returned to work again. But denial, in this case, does not suffice; it should be coupled with evidence to support it. In the *Machica* case, the memorandum, among others, represented clear and convincing proof that there was no intention to dismiss the employees; it constituted evidence in support of the employer's denial. In the instant case, petitioners failed to adduce evidence to rebut Javilgas' claim of dismissal and satisfy the burden of proof required.

4. ID.; ID.; ID.; ATTORNEY'S FEES; AWARDED ALTHOUGH THE EMPLOYEE'S CASE WAS HANDLED *PRO BONO* BY THE U.P. OFFICE OF THE LEGAL AID. — There is

no merit in petitioners' claim that attorney's fees may not be awarded to the respondent since his case was being handled *pro bono* by the U.P. Office of Legal Aid, which provides free legal assistance to indigent litigants. In this jurisdiction, there are two concepts of attorney's fees. In the *ordinary* sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. On the other hand, in its *extraordinary* concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party *to the prevailing party, and not counsel*. In its extraordinary sense, attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code, among which are the following which obtain in the instant case: (7) In actions for the recovery of wages of household helpers, laborers and skilled workers; (8) In actions for indemnity under workmen's compensation and employer's liability laws; x x x (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

APPEARANCES OF COUNSEL

Layawan Layawen and Associates for petitioners.
U.P. Office of the Legal Aid for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review assails the Decision[1] of the Court of Appeals dated August 29, 2006 in CA-G.R. SP No. 89164 which reinstated the decision of the Labor Arbiter finding respondent Rufino A. Javilgas to have been illegally dismissed. Also assailed is the Resolution[2] of December 21, 2006 denying the motion for reconsideration.

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[1] *Rollo*, pp. 30-41. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

[2] *Id*. at 66-67.

On December 10, 2002, Javilgas filed a Complaint[3] for illegal dismissal, underpayment of 13th month pay, separation pay and non-remittance of SSS contributions against petitioners Padilla Machine Shop, Rodolfo Padilla and Leonardo Padilla.

Javilgas alleged that in January 1998, he was hired by Padilla Machine Shop, located at Commonwealth Avenue, Quezon City. His work consisted of reconditioning machines and was paid a monthly salary of ₱6,480.00. In July 1998, his salary was increased to ₱7,200.00; and in January 1999, his salary was again increased to ₱8,400.00 until his dismissal in April 2002. Petitioners made regular deductions for his SSS contributions, but sometime in 2002, he found out that his employer was not remitting the contributions to the SSS; as a result, he was not able to avail of the benefits thereof when his wife gave birth. When he complained about the failure of his employer to remit his SSS contributions, the latter transferred him to the Novaliches branch office.

Javilgas further alleged that in April 2002, Rodolfo Padilla called him by telephone and told him to "stop working," but "without giving any reason therefor." He stopped reporting for work and sued petitioners for illegal dismissal, with a prayer for the payment of backwages, pro rated 13th month pay, separation pay, and moral and exemplary damages.

On the other hand, petitioner Rodolfo Padilla (Rodolfo), proprietor of Padilla Machine Shop, alleged that in 1999, SSS and Medicare contributions were deducted from Javilgas' salary and remitted to the SSS; that in 2000, they (petitioners) submitted a report to the SSS that Javilgas had voluntarily left and abandoned his work, and transferred to another shop, Raymond Machine Shop, located within the same vicinity as Padilla Machine Shop; that some months after, Javilgas returned and pleaded to be re-employed with them; that Rodolfo Padilla took Javilgas back to work, but their customers were not satisfied with the quality of his work; hence Javilgas was assigned to the Novaliches branch; that Javilgas incurred numerous absences in the Novaliches branch;

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[3] CA *rollo*, p. 68.

that Javilgas had opened his own machine shop and even "pirated" the clients of petitioners; and finally, Javilgas again voluntarily left Padilla Machine Shop without prior notice.

On March 31, 2004, the Labor Arbiter rendered a decision that Javilgas was illegally dismissed, the dispositive portion of which reads, as follows:

> WHEREFORE, judgment is hereby rendered finding Complainant to have been illegally dismissed. Concomitantly, Respondents are ordered jointly and severally to pay Complainant the following:
>
> ₱232,065.92 – representing backwages;
> 50,400.00 – representing separation pay;
> 18,571.00 – representing 13th month pay
>
> ₱301,036.92 – Total
>
> Ten percent of the total award as attorney's fees.
>
> The claim of non-remittance of SSS contribution is dismissed for lack of jurisdiction.
>
> SO ORDERED.[4]

Petitioners appealed the decision to the National Labor Relations Commission (NLRC) which reversed the decision of the Labor Arbiter, to wit:

> WHEREFORE, premises considered, we give due course to the appeal of respondents. Consequently, the Decision of the Labor Arbiter below is hereby reversed and set aside and a new decision is entered dismissing the instant case for lack of merit.
>
> SO ORDERED.[5]

The NLRC found no sufficient evidence to show that Javilgas was dismissed or prevented from reporting for work; that Javilgas could not categorically state when he was dismissed: in his

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[4] *Rollo*, pp. 76-77. Penned by Labor Arbiter Ermita T. Abrasaldo-Cuyuca.

[5] *Id.* at 91. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

complaint, he claimed to have been dismissed on February 27, 2002, but in subsequent pleadings he alleged he was dismissed in mid-April, 2002. Relying on the principle enunciated in *Chong Guan Trading v. National Labor Relations Commission*,[6] it ruled that where Javilgas was never notified of his dismissal nor was he prevented from returning to work, there could be no illegal dismissal. The NLRC also found the telephone conversation between Javilgas and Rodolfo Padilla — where the latter told the former to stop reporting to work — self-serving, conjectural and of no probative value, especially where Javilgas himself declares that he was told by Rodolfo not to report to work *without giving any reason therefor*. In fine, the NLRC held that Javilgas voluntarily resigned, and not illegally dismissed.

On appeal, the Court of Appeals reversed the NLRC and reinstated the Decision of the Labor Arbiter. It held that the burden of proof is on the petitioners, to show that Javilgas was dismissed for a valid and just cause. As to the inconsistency in the dates of Javilgas' termination, the appellate court noted that it was a case of miscommunication between Javilgas and the person who filled up the entries in the *pro forma* labor complaint in his behalf; Javilgas was found to be illiterate, as he did not even get to finish Grade School. Likewise, the delay of eight months in the filing of the complaint should not work against respondent because it took time for him to obtain the services of a counsel.

The appellate court did not lend credence to petitioners' claim that respondent voluntarily resigned since the issue was only raised for the first before the NLRC. A change of theory on appeal — from abandonment of work in the Labor Arbiter to voluntary resignation on appeal, is prohibited. It likewise declared as without basis the petitioners' claim that Javilgas was operating a rival machine shop, since petitioners failed to prove with sufficient evidence the veracity of said claim. The Court of Appeals disregarded the documents submitted by the

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[6] G.R. No. 81471, April 26, 1989, 172 SCRA 831.

petitioners to the NLRC for the first time (business permit and photographs) which they claim would show that respondent was operating his own machine shop during the period of his employment with Padilla Machine Shop.

Petitioners' motion for reconsideration was denied hence, the instant petition raising the following issues:

1. The Court of Appeals erred in holding that upon the petitioners rested the burden of proving that the termination of the respondent was for a valid cause, despite their consistent position that the latter was never terminated from employment;

2. The Court of Appeals erred in holding that the said consistent position adopted by petitioners — that they never dismissed Javilgas — is not sufficient to negate the charge of illegal dismissal;

3. The Court of Appeals erred in disregarding documentary evidence presented for the first time on appeal; and,

4. The Court of Appeals erred in awarding attorney's fees to the respondent who was being represented *pro bono* by the Office of Legal Aid of the U.P. College of Law.

Petitioners did not offer any evidence to disprove the allegation that Rodolfo Padilla informed Javilgas by phone to stop reporting to work. On the contrary, Rodolfo admitted that he "advised" Javilgas to "concentrate on his (Javilgas') shop if he has no more time for the company (Padilla Machine Shop)."[7] Moreover, it was only in the NLRC that the documents and photographs purporting to show that Javilgas was conducting business inimical to the interests of Padilla Machine Shop were submitted.

In illegal dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause.[8] Petitioners have failed to discharge themselves of the

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[7] *Rollo*, p. 14.

[8] *Eastern Telecommunications Phils., Inc. v. Diamse*, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 244.

burden. With respect to Javilgas' claim of illegal dismissal, petitioners merely alleged that —

> 13. From that time on, Complainant (Javilgas), did not anymore report for work and left Respondent's (Rodolfo) business for the second time without any advance notice of terminating his services as required by law;
>
> 14. This Complainant requested Respondent to compute all the SSS/Medicare deductions on his weekly/daily salaries for he is planning to have a refund of these deductions;
>
> x x x x x x x x x

Petitioner Rodolfo, however, did not elaborate or show proof of the claimed abandonment. Instead, he concluded that Javilgas "abandoned his corresponding duties and responsibilities x x x when he established and created his own machine shop outfit x x x."[9]

For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[10] The establishment of his own shop is not enough proof that Javilgas intended to sever his relationship with his employer.

Moreover, it was only in 2003 that Rodolfo allegedly confirmed his suspicion that Javilgas was operating his own machine shop. Rodolfo admits that it was only when the case was on appeal to the NLRC that his suspicion was confirmed. Thus, in the petition for review on *certiorari*[11] with this Court, petitioners claim that —

> During the pendency of this case on appeal with the NLRC, because of the vehement denial of complainant, Rufino Javilgas that he has

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[9] CA *rollo*, p. 135.

[10] *ACD Investigation Security Agency, Inc. v. Daquera*, G.R. No. 147473, March 30, 2004, 426 SCRA 494, 499.

[11] *Rollo*, p. 9.

never operated a machine shop which is doing the same business with (petitioners)(,) Mr. Rodolfo Padilla and the undersigned counsel went to the residence of (respondent), Rufino Javilgas at Barangay Sta. Clara, Sta. Maria, Bulacan on January 3, 2003, and right then and there, Mr. Padilla and the undersigned counsel saw personally the machine shop being operated by Mr. Rufino Javilgas. x x x (Words in parentheses supplied)

This only proves that in April 2002, when Rodolfo allegedly "advised" Javilgas to "concentrate on his (Javilgas') shop if he has no more time for the company (Padilla Machine Shop)," petitioners had nothing but unfounded suspicions.

In *Machica v. Roosevelt Services Center, Inc.*,[12] we sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In that case, several employees who allegedly refused to sign a memorandum[13] from their employer,

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[12] G.R. No. 168664, May 4, 2006, 489 SCRA 534.

[13] The memorandum read:

To: ALL PERSONNEL CONCERNED
Subject: San Francisco Mirror Corp.
#43 De Vera St., SFDM, Quezon City

Ang dating customer *na ito ay hindi na bumibili ng mga* fuels (Diesel *at Gasolina*) *mula pa noong OCTOBER 2000. Ang dahilan ay nagkaroon ng PANDARAYA sa mga* transactions. (*Tingnan at basahin ang nakalakip na* letter *ng* San Francisco Mirror Corp.) *Ang PANDARAYA at SABWATAN ay pinatunayan ng* San Francisco Mirror Corp. *sa mga sulat na pag-amin ng kanilang empleyado.*

Dahil sa nangyaring ito, ang naging resulta ay ang mga sumusunod:

1) *Umalis ang San Francisco sa atin, nawalan ng "good customer" ang istasyon*

2) *Inalis/tinanggal ang mga empleyadong kasama sa pandaraya at sabwatan*

3) *Sinabihan ang ibang customers tungkol sa sabwatan sa pandaraya at nasira ang* "Goodwill" *ng istasyon*

4) *Ang utang nila* ₱*47,991.15 naiwan noong October 2000 pa ay nitong March 20, 2001 lang binayaran* (or after SIX MONTHS) *at kalahati lang o* ₱*23,995.58 ang ibinayad*

5) *Dahil sa wala namang aamin sa pandarayang ito, ang mga may kaugnayan o nakakaalam sa nangyari ay mag-share sa hindi binayaran ng* customer

detailing the commission of alleged anomalies that resulted in the overpricing and overcharging of customers, filed an illegal dismissal case three days after receiving the said memorandum. They claimed that they were illegally dismissed and were told not to report for work anymore; the employer denied this and asserted that the workers (who appeared to be the suspects in the anomalies) were merely given three to five days off to decide whether or not to agree to share the loss suffered by it as a result of the anomalies. The Court, in ruling that there was no illegal dismissal, held that:

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.

We have reviewed the Memorandum of respondent Dizon and find nothing therein to indicate that any of the employees of respondent corporation, including the petitioners, would be considered terminated from employment if they refused to share in the ₱23,997.58 loss. Petitioners and other employees of respondent corporation were merely required to affix their signatures in the Memorandum on the space opposite their respective names, to confirm that they had read and understood the same. As elucidated by the NLRC in the assailed Resolution:

> Read in its entirety, the Memorandum reflects the GOOD FAITH of the employer in resolving a discovered anomaly. First, it is a declaration of AMNESTY and FORGIVENESS; it did not name names; it did not state that the guilty ones will

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Sana ay huwag nang gagawin uli ito sa ibang customers *at tigilan na ang ganitong masamang gawain. Siguradong hindi mabuti ang mangyayari sa mga gawaing ito!*

Roosevelt Servicenter, Inc.

March 23, 2001

Nabasa ko at naintindihan ang memo tungkol sa SAN FRANCISCO MIRROR CORP. *na kasama sa pahina 1.*

> be pursued and punished. Second, it asked for SHARING among the employees for the loss due to the discovered anomaly. Third, it indicated a POSITIVE BUSINESS DIRECTION as it exhorted the employees from participating in similar anomalies henceforward.[14]

Petitioners, in like manner, consistently deny that Javilgas was dismissed from service; that he abandoned his employment when he walked out after his conversation with Rodolfo and never returned to work again. But denial, in this case, does not suffice; it should be coupled with evidence to support it. In the *Machica* case, the memorandum, among others, represented clear and convincing proof that there was no intention to dismiss the employees; it constituted evidence in support of the employer's denial.

In the instant case, petitioners failed to adduce evidence to rebut Javilgas' claim of dismissal and satisfy the burden of proof required.

As regards the eight-month hiatus before Javilgas instituted the illegal dismissal case, we sustain the Court of Appeals' ruling that Javilgas filed the complaint within a reasonable period during the three-year period provided under Article 291 of the Labor Code.

Finally, there is no merit in petitioners' claim that attorney's fees may not be awarded to the respondent since his case was being handled *pro bono* by the U.P. Office of Legal Aid, which provides free legal assistance to indigent litigants. In this jurisdiction, there are two concepts of attorney's fees. In the *ordinary* sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. On the other hand, in its *extraordinary* concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party *to the prevailing party*,[15] *and not counsel*. In its extraordinary

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[14] *Machica v. Roosevelt Services Center, Inc*., *supra* note 12 at 544-545.

[15] *Compania Maritima, Inc. v. Court of Appeals*, G.R. No. 128452, November 16, 1999, 318 SCRA 169, 175-176.

sense, attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code,[16] among which are the following which obtain in the instant case:

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated August 29, 2006 in CA-G.R. SP No. 89164 which reinstated the Decision of the Labor Arbiter finding that respondent Rufino Javilgas was illegally dismissed from service and its Resolution of December 21, 2006 denying the motion for reconsideration are hereby *AFFIRMED*.

No costs.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 177294. February 19, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH DELA PAZ,** *accused-appellant.*

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[16] *Padillo v. Court of Appeals*, G.R. No. 119707, November 29, 2001, 371 SCRA 27, 47.

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS. — For the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman, and** (2) he accomplished such act through force or intimidation, or **when she was deprived of reason** or otherwise unconscious, **or when she was under 12 years of age or was demented.**

2. ID.; ID.; CARNAL KNOWLEDGE OF A WOMAN WHO IS A MENTAL RETARDATE IS RAPE; APPLICATION. — Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter**. The prosecution's evidence has clearly established beyond doubt that AAA was mentally retarded because the results of the mental and the psychological tests showed that she had a mental age equivalent to that of a six-year-and-six-month-old child. This Court has held in a long line of cases that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial desires of the accused, or even absent the circumstances of force or intimidation or the fact that the victim was deprived of reason or otherwise unconscious, the accused would still be liable for rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. **The rationale, therefore, is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.**

3. ID.; ID.; BROKEN HYMEN IS NOT AN ELEMENT OF RAPE. — A freshly broken hymen is not an essential element of rape. Even if the hymen of the victim was still intact, the possibility of rape cannot be ruled out. The rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape. Also, the rupture of the hymen or vaginal laceration is not necessary for rape to be consummated. It is settled that a mere touching, no matter how slight, of the *labia* or lips of the female organ by the male

genitalia even without rupture or laceration of the hymen is sufficient to consummate rape. Full penetration is not required, as proof of entrance showing the slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient. In proving sexual intercourse, it is enough that there was the slightest penetration of the male organ into the female sex organ.

4. ID.; ID.; QUALIFIED RAPE; MENTAL RETARDATION CAN BE PROVEN BY CLINICAL AND TESTIMONIAL EVIDENCE. — In the present case, both clinical and testimonial evidence were presented by the prosecution to prove that AAA is a mental retardate. The prosecution presented the neuro-psychiatric examination and evaluation report made by the clinical psychologist, who conducted a series of psychological tests on the victim to ascertain her mental condition. Based on such series of psychological tests performed on AAA, she was found to be suffering from Moderate Mental Retardation with an I.Q. of 40 and a mental age equivalent to that of a six-year-and-six-month-old child. The testimonies given by CCC and the clinical psychologist likewise affirmed the fact that AAA is, indeed, a mental retardate. CCC testified that her sister, although 31 years old already, was "*isip bata*" and had marked difficulty in understanding things and events. Likewise, the clinical psychologist noticed that when she examined AAA, the latter gave long answers to simple questions. With the series of psychological tests she gave the victim, she has no doubt that AAA is a mental retardate. With the foregoing pieces of evidence offered by the prosecution, it is beyond cavil that they were able to prove that AAA is a mental retardate. It is also noteworthy that even the defense did not dispute the fact that the victim is suffering from mental retardation. Thus, this Court is in conformity with the findings of both the trial court and the appellate court that AAA is unquestionably a mental retardate.

5. REMEDIAL LAW; EVIDENCE; DEFENSE; DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE WITNESSES; APPLICATION. — Jurisprudence holds that denial, like alibi, is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that appellant was at the scene of the crime and was the victim's assailant. To merit credibility, it must be

buttressed by strong evidence of non-culpability. Also, being a negative defense, denial must be substantiated by clear and convincing evidence; otherwise, it would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. As between categorical testimonies that ring of truth on one hand and a bare denial on the other, this Court has strongly ruled that the former must prevail. Indeed, positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial. In this case, AAA positively identified the appellant as the person who had raped her. Moreover, even the appellant admitted that he did not know any reason why AAA or her family would charge him with such a grave offense. He was even a friend of CCC, a brother of AAA. And absent any ill motive on the part of the victim or her family, the appellant's defense of denial cannot prevail over AAA's positive identification of the appellant.

6. ID.; ID.; ADMISSIONS; PLEA FOR FORGIVENESS, AN IMPLIED ADMISSION OF GUILT. — Significantly, at the time that the appellant was punched by the brother of AAA when he was caught naked inside the comfort room with AAA, the appellant immediately asked for forgiveness. It is well-entrenched in our jurisprudence that a plea for forgiveness by the appellant may be considered as analogous to an attempt to compromise. In criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt. No person would ask for forgiveness unless he has committed some wrong, for to forgive means to absolve; to pardon; to cease to feel resentment against on account of a wrong committed; to give up a claim to requital or retribution from an offender.

7. CRIMINAL LAW; RAPE; MEDICAL FINDINGS IS NOT INDISPENSABLE TO THE PROSECUTION OF A RAPE. — A medical examination is not indispensable to the prosecution of a rape. Insofar as the evidentiary weight of the medical examination is concerned, we have already ruled that a medical examination of the victim, as well as a medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape. What is important is that the

testimony of private complainant about the incident is clear, unequivocal and credible, and this we find here to be the case. In the instant case, the medical findings revealed that the hymen of the complainant was still intact. Nevertheless, the same does not negate the fact of rape committed by the appellant against AAA, as the Medico-Legal Officer of the NBI who conducted the medical examination on AAA clearly explained that AAA's hymen is stretchable, meaning, AAA's hymen can accommodate an average-sized Filipino male organ in full erection without breaking the hymen.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; COMPETENCE AND CREDIBILITY OF MENTALLY DEFICIENT WITNESS, UPHELD. — It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, as someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Besides, having the mental age level of a six-year-and-six-month-old normal child would even bolster her credibility as a witness, considering that a victim at such tender age would not publicly admit that she had been criminally abused and ravished unless that was the truth. For no woman, especially one of tender age, practically only a girl, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished to avenge her honor and to condemn a grave injustice to her.

9. ID.; ID.; ID.; FINDINGS OF TRIAL COURT THEREON ACCORDED GREAT RESPECT ON APPEAL ESPECIALLY WHEN SUSTAINED BY THE COURT OF APPEALS. — Moreover, the trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. The rule finds an even more

stringent application where the said findings are sustained by the Court of Appeals. In the case at bar, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of AAA's testimony, the same being clear, unequivocal and credible.

10. ID.; CRIMINAL PROCEDURE; INFORMATION; KNOWLEDGE OF THE OFFENDER OF THE MENTAL DISABILITY OF THE VICTIM AT THE TIME OF THE COMMISSION OF RAPE MUST BE ALLEGED IN THE INFORMATION. — Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10 of the Revised Penal Code, as amended by Republic Act No. 8353. An allegation in the information of such knowledge of the offender is necessary, as a crime can only be qualified by circumstances pleaded in the indictment. A contrary ruling would result in a denial of the right of the accused to be informed of the charges against him, and hence a denial of due process. In this case, knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape was properly alleged in the Information filed against the appellant.

11. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; OFFENDER'S KNOWLEDGE OF THE VICTIM'S MENTAL RETARDATION IS A SPECIAL QUALIFYING CIRCUMSTANCE. — Such knowledge of the victim's mental retardation was sufficiently proven by the prosecution beyond reasonable doubt. The prosecution had established that appellant frequented the house of the victim because he was a friend and a drinking buddy of AAA's brother, CCC. The appellant was also living a door away from the house of the victim from the time that they came to know each other. The appellant and the victim also had conversations whenever the appellant visited her brother. Worthy to note is the fact that AAA has an I.Q. of 40; thus, she does not belong to borderline cases of mental retardation, the I.Q. of which ranges from 70-89, wherein it is difficult to determine whether the victim is of normal mind or is suffering from a mild mental retardation. Hence, as found by the trial court and the appellate court, AAA's mental retardation was clearly apparent and noticeable to people who had interactions with her like herein appellant. The appellant cannot therefore

feign ignorance as regards AAA's mental condition. All told, the prosecution was able to prove that the appellant is guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. Taking into consideration the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court has no option but to impose on the appellant the supreme penalty of death.

12. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; AWARDED TO THE RAPE VICTIM. — This Court modifies the award of moral damages by the appellate court. We also find it proper to award exemplary damages to the victim. The appellate court merely imposed the sum of ₱50,000.00 as moral damages. To conform with the ruling in *People v. Sambrano*, this Court increases the amount of moral damages from ₱50,000.00 to ₱75,000.00 and orders the appellant to also indemnify AAA in the amount of ₱25,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 27 September 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 02164, which affirmed the Decision[2] dated 4 June 2004 of the Regional Trial Court (RTC) of Manila, Branch 18, in Criminal Case No. 99-175577, finding herein appellant guilty beyond reasonable doubt

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok, concurring. *Rollo*, pp. 3-22.

[2] Penned by Acting Presiding Judge Romulo A. Lopez. CA *rollo*, pp. 13-24.

of one count of qualified rape with the modification that the penalty of *reclusion perpetua* was imposed instead of the death penalty in view of the enactment of Republic Act No. 9346[3] which prohibits the imposition of the latter. The amount of damages awarded was also modified.

Two separate Informations[4] both dated 4 August 1999 were filed against the appellant charging him with the crime of rape, as defined and penalized under Republic Act No. 8353,[5] in relation to Republic Act No. 7610,[6] committed against AAA,[7] on the same date 16 May 1999. The two Informations read as follows:

Criminal Case No. 99175577

This state prosecutor of the Department of Justice, on sworn complaint of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation,

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[3] Otherwise known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*."

[4] Records, pp. 5-8.

[5] Otherwise known as "*The Anti-Rape Law of 1997*."

[6] Otherwise known as "*Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act*."

[7] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "x x x" as in "No. x x x Street, x x x District, City of x x x."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as "*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*"; Sec. 44 of Republic Act No. 9262, otherwise known as "*Anti-Violence Against Women and Their Children Act of 2004*"; and Sec. 40 of A.M. No. 04-10-11-SC, known as "*Rule on Violence Against Women and Their Children*" effective November 15, 2004.

and of her mother, BBB, accuses [herein appellant] Joseph Dela Paz of RAPE, defined and punished by Republic Act No. 8353, in relation to Republic Act No. 7610, committed as follows:

> On 16 May 1999, at [No.] xxx, xxx, xxx, within the jurisdiction of this Honorable Court, [appellant] Joseph Dela Paz did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, knowing at the time that she was mentally disabled and employing force and intimidation upon her, to her damage and prejudice.[8]

Criminal Case No. 99175578

This state prosecutor of the Department of Justice, on sworn complaint of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, and of her mother, BBB, accuses [herein appellant] Joseph Dela Paz of RAPE, defined and punished by Republic Act No. 8353, in relation to Republic Act No. 7610, committed as follows:

> On 16 May 1999, at [No.] xxx, xxx, xxx, within the jurisdiction of this Honorable Court, [appellant] Joseph Dela Paz did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, knowing at the time that she was mentally disabled and employing force and intimidation upon her, to her damage and prejudice.[9]

Upon arraignment, the appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to both charges.

At the pre-trial conference, the prosecution and the defense failed to make any stipulation of facts. The prosecution, however, requested the marking of the following documents as their Exhibits for purposes of identification, to wit: (1) Complaint Sheet[10] as

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[8] Records, p. 5.

[9] *Id*. at 7.

[10] *Id*. at 9.

Exhibit "A"; (2) Sworn Statement of the mother of AAA[11] as Exhibits "B", "B-1" and "B-2"; (3) Sworn Statement of AAA[12] as Exhibits "C", "C-1", "C-2" and "C-3"; (4) Living Case No. MG-99-478[13] as Exhibit "D"; and (5) Neuro-psychiatric examination and evaluation report[14] issued by Lorenda N. Gozar, Ma. Cynthia A. Alcuaz and Romel Tuazon Papa, Psychologist-in-Charge, Chief Psychologist and Chief of the National Bureau of Investigation (NBI) Neuro-Psychiatric Service, respectively, as Exhibits "E", "E-1", "E-2", and "E-3". Thereafter, the pre-trial conference was terminated and trial on the merits ensued.

The prosecution presented the following witnesses: CCC, the younger brother of the victim; AAA, the victim; Dr. Rio Blanca Dalid, Medico-Legal Officer of the NBI; and Lorenda Nocum Gozar,[15] the psychologist at the Neuro-Psychiatric Service of the NBI.

CCC testified that he is the younger brother of the victim, AAA. Having been living in the same house, CCC was able to observe the behavior of AAA. He described her as "*isip bata*" although she was already 31 years old because of her marked difficulty in remembering and comprehending things and events. According to him, AAA had only finished kindergarten as she could not cope with the demands of higher education.[16]

On the night of 16 May 1999, while he, together with his wife, brother and sister were watching television in their house located at No. xxx, xxx, xxx, he saw AAA go downstairs to answer the call of nature in a comfort room situated beside

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

[12] *Id*. at 12-14.

[13] *Id*. at 15.

[14] *Id*. at 16-18.

[15] In the Neuro-psychiatric examination and evaluation report conducted on the victim, the psychologist signed her name as Lorenda Nocum Gozar, not Lorenda Nocum Rozar, *id*.

[16] TSN, 27 January 2003, p. 3.

their store.[17] Thirty minutes had passed, but his sister had not yet returned, so, they decided to follow her. They went down to the comfort room beside their store and began to knock at the door of the comfort room. They knocked incessantly for about 20 minutes and got no response. Consequently, they forcibly opened the door. Much to their surprise, they saw their half-dressed sister, who was crying at that time, and the naked appellant inside the comfort room. In that situation, CCC's elder brother immediately boxed the appellant on the right cheek. The appellant, who was a friend, neighbor and drinking buddy of CCC, apologized at once and asked for their forgiveness. Thereafter, they talked to their sister, AAA, but she just kept on crying.[18]

During AAA's testimony, she disclosed that on the night of 17 May 1999,[19] while she was defecating in a comfort room located outside their house, the one beside their store, the appellant entered. AAA shouted as she was afraid that the appellant would kill her. Once inside the comfort room, the appellant started to undress her. As she was then sitting on the toilet bowl, the appellant, who was standing in front of her, lifted her up with both her hands raised upward and then inserted his penis into her vagina. After the appellant had finished the push and pull movements, he withdrew his organ from the vagina of AAA and inserted it again for a second round. Thereafter, the appellant started to dress up AAA. It was at this point that AAA's brothers barged into the comfort room, literally catching the appellant with his pants down. AAA's brother then punched the appellant. In turn, the appellant asked for forgiveness.[20]

AAA further testified that she came to know the appellant who was the friend of her brother, CCC. She likewise claimed

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

[18] *Id*. at 4-6, 11.

[19] In the Informations filed against the appellant, the date of the commission of the alleged crime of rape was 16 May 1999, but, in the transcript of the stenographic notes of the victim's testimony the date was 17 May 1999, however, the date of the commission of the alleged rape incident was not contested.

[20] TSN, 23 September 2003, pp. 6-8.

that she went to the doctor and to the police station together with her mother but she cannot remember the dates anymore.[21]

Dr. Rio Blanca Dalid, the Medico-Legal Officer of the NBI who examined AAA declared that on 18 May 1999, she examined AAA as evidenced by Living Case No. MG-99-478.[22] She found AAA's hymen to be stretchable meaning that AAA's hymen can accommodate an average-sized Filipino male organ in full erection without breaking the hymen.[23]

Lorenda Nocum Gozar, the clinical psychologist at the Neuro-Psychiatric Service of the NBI who conducted a series of psychological tests on the victim to determine her mental condition, revealed in court that on 18 May 1999, the medical officer of the NBI referred to her the case of AAA. She conducted the psychological examination on the victim on the said date and the same was reduced into writing[24] on 1 June 1999. Upon examining AAA, she found that AAA belonged to the Mentally Retarded Group with a mental age of six years and six months and an Intelligence Quotient (I.Q.) of 40, although she was already 31 years old. In arriving at such conclusion, she used the Stanford Binet Intelligence Scale, the Projective Test, behavioral examination, psychological test examination, psychological evaluation and psychological interview. All of the said types of psychological tests yielded the same results as regards the mental condition of the victim. She also observed that AAA gave long answers to simple questions. Like, when AAA was asked what her name was, she replied, "*si Joseph ni-rape ako*." Thus, she concluded that AAA could really be classified as a mental retardate.[25]

For its part, the defense presented the appellant who categorically denied having raped AAA. Appellant averred that he does not

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[21] *Id.* at 7.

[22] Records, p. 15.

[23] Testimony of Dr. Rio Blanca Dalid, TSN, 23 September 2003, pp. 2-3.

[24] Records, pp. 16-18.

[25] TSN, 11 February 2003, pp. 4-8.

know any reason why the family of AAA filed such a serious charge against him. No cross-examination was conducted upon the appellant; thus, the defense formally offered appellant's testimony and the medical findings of the NBI which showed that there was no sign of extragenital injuries on the victim at the time of her medical examination.[26]

On 4 June 2004, the trial court rendered the assailed Decision convicting the appellant of only one count of rape, the decretal portion of which reads, thus:

> WHEREFORE, viewed from above observations and findings the [appellant] should be held liable for only one count of rape – Criminal Case No. 99-175577 acquitting him on the second information Criminal Case No. 99-175578 pertaining to the second insertion of the male organ.
>
> **In Criminal Case No. 99-175577:**
>
> Finding the prosecution's evidence sufficient to support the allegation in the information having committed sexual intercourse to a woman with a mental capacity of a 6 years and 6 months although 31 years old with the aggravating qualifying circumstance of the [appellant's] knowledge of the mental disability and or emotional disorder of the victim AAA, without any mitigating circumstance, he is hereby found **guilty** of rape under Republic Act [No.] 8353 Article 266A paragraph d, in relation to paragraph B-5 subparagraph 10, without applying the indeterminate sentence law, the [appellant] is hereby sentenced to suffer the penalty of DEATH.
>
> x x x x x x x x x
>
> He is hereby ordered to indemnify the victim the sum of ₱50,000.00 representing civil liability.
>
> **In Criminal Case No. 99-175578:**
>
> **The [appellant] is hereby acquitted** in the above numbered criminal case.[27] (Emphases supplied.)

The records of this case were originally transmitted to this Court on automatic review.

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[26] TSN, 21 January 2004, pp. 3-5.

[27] CA *rollo*, pp. 23-24.

Pursuant to *People v. Mateo*,[28] the records of the present case were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, appellant assigns the following errors, *viz*:

I. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE [APPELLANT'S] DEFENSE.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR THE CRIME CHARGED.[29]

Accordingly, the Court of Appeals, taking into consideration the assignment of errors stated by the appellant in his Appellant's Brief and after a thorough study of the records of the case, rendered a Decision on 27 September 2006, affirming the conviction of the appellant for one count of rape aggravated by the appellant's knowledge of the victim's mental disability and/or emotional disorder, with the following modifications: (1) the penalty of *reclusion perpetua* was imposed in lieu of the death penalty, in view of the enactment of Republic Act No. 9346 which prohibits the imposition thereof; and (2) the amount of civil indemnity awarded by the RTC to the victim was increased from ₱50,000.00 to ₱75,000.00 and appellant was ordered to pay the victim moral damages in the amount of ₱50,000.00. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal is ***DISMISSED***. The appealed [D]ecision dated [4 June 2004] of the [RTC] of Manila, Branch 18 in Criminal Case No. 99-175577, finding the [appellant] guilty of one (1) count of Qualified Rape is ***AFFIRMED***, with the ***MODIFICATION*** that he is hereby sentenced to suffer the penalty of ***reclusion perpetua***, in view of the abolition of the death penalty with the enactment of Republic Act No. 9346. Moreover, the [appellant] is ordered to pay the victim ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Costs *de oficio*.[30]

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[28] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[29] *Id.* at 37.

[30] *Rollo,* pp. 21-22.

Aggrieved by the aforesaid Decision, the appellant filed a Notice of Appeal.[31] The Court of Appeals then forwarded to this Court the records of this case.

On 11 July 2007,[32] this Court resolved to accept the present case and notify the parties that they may file their respective supplemental briefs, if they so desired. Both the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs dated 27 June 2005 and 24 February 2005, respectively, as their supplemental briefs.

After a careful review of the records of this case, this Court affirms appellant's conviction.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[33] Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, states that:

> ART. 266-A. *Rape; When and How Committed*. — Rape is committed.
>
> 1) By a man who have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

On the basis thereof, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal**

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[31] CA *rollo*, pp. 133-134.

[32] *Rollo*, p. 26.

[33] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 459.

knowledge of a woman, and (2) he accomplished such act through force or intimidation, or **when she was deprived of reason** or otherwise unconscious, **or when she was under 12 years of age or was demented**.[34] Clearly, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter**.[35]

In *People v. Dalandas*,[36] citing *People v. Dumanon*,[37] this Court held that mental retardation can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[38]

In the present case, both clinical and testimonial evidence were presented by the prosecution to prove that AAA is a mental retardate. The prosecution presented the neuro-psychiatric examination and evaluation report made by the clinical psychologist, who conducted a series of psychological tests on the victim to ascertain her mental condition. Based on such series of psychological tests performed on AAA, she was found to be suffering from Moderate Mental Retardation with an I.Q. of 40 and a mental age equivalent to that of a six-year-and-six-month-old child. The testimonies given by CCC and the clinical psychologist likewise affirmed the fact that AAA is, indeed, a mental retardate. CCC testified that her sister, although 31 years old already, was "*isip bata*" and had marked difficulty in understanding things and events. Likewise, the clinical psychologist noticed that when she examined AAA, the latter gave long answers to simple questions. With the series of

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[34] *Id*.

[35] *People v. Magabo*, 402 Phil. 977, 983-984 (2001).

[36] 442 Phil. 688 (2002).

[37] 401 Phil. 658 (2000).

[38] *People v. Dalandas*, *supra* note 36 at 697.

psychological tests she gave the victim, she has no doubt that AAA is a mental retardate.

With the foregoing pieces of evidence offered by the prosecution, it is beyond cavil that they were able to prove that AAA is a mental retardate. It is also noteworthy that even the defense did not dispute the fact that the victim is suffering from mental retardation. Thus, this Court is in conformity with the findings of both the trial court and the appellate court that AAA is unquestionably a mental retardate.

As it is settled that the victim in the present case is a mental retardate, the only thing that must be established is the fact of sexual congress between the appellant and the victim.

In the case at bar, the appellant denied having raped the victim. He even argues that the trial court deprived him of his right to be presumed innocent when it disregarded his defense of denial. This contention is specious.

Jurisprudence holds that denial, like alibi, is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that appellant was at the scene of the crime and was the victim's assailant. To merit credibility, it must be buttressed by strong evidence of non-culpability. Also, being a negative defense, denial must be substantiated by clear and convincing evidence; otherwise, it would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[39]

As between categorical testimonies that ring of truth on one hand and a bare denial on the other, this Court has strongly ruled that the former must prevail. Indeed, positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[40]

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[39] *People v. Tagana*, 468 Phil. 784, 807 (2004).

[40] *Id.* at 807-808.

In this case, AAA positively identified the appellant as the person who had raped her. This can be proven by the following testimony of the victim:

Q: I'l (sic) repeat the question. On [17 May 1999] at around 11:00 p.m. do you remember where you were?
A: I was defecating Mam (sic) in the CR.

Q: Where is your CR located?
A: "*Sa labas po*."

x x x x x x x x x

Q: While you were defecating what unusual incident that happened if any?
A: I shouted Mam (sic).

Q: Why?
A: I was afraid he will kill me.

Q: Who?
A: Joseph dela Paz.

Q: Where is Joseph dela Paz now?
A: Over there Mam (sic). (Witness pointing to a man who answered by the name Joseph dela Paz.)

Q: What was Joseph doing to you at the (sic) time?
A: He inserted his penis to my vagina, Mam (sic).

Q: How did he do that?
A: *Dalawang beses po Mam* (sic).

Q: Were you wearing anything when he did this?
A: Yes, Mam (sic).

Q: What did he do?
A: He took off my clothes.[41]

Moreover, even the appellant admitted that he did not know any reason why AAA or her family would charge him with such a grave offense.[42] He was even a friend of CCC, a brother of AAA. And absent any ill motive on the part of the victim or

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[41] Testimony of AAA, TSN, 23 September 2003, p. 6.

[42] TSN, 21 January 2004, p. 4.

her family, the appellant's defense of denial cannot prevail over AAA's positive identification of the appellant.

Significantly, at the time that the appellant was punched by the brother of AAA when he was caught naked inside the comfort room with AAA, the appellant immediately asked for forgiveness. It is well-entrenched in our jurisprudence that a plea for forgiveness by the appellant may be considered as analogous to an attempt to compromise. In criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[43] No person would ask for forgiveness unless he has committed some wrong, for to forgive means to absolve; to pardon; to cease to feel resentment against on account of a wrong committed; to give up a claim to requital or retribution from an offender.[44] Thus, the trial court did not commit an error when it disregarded the appellant's defense of denial.

The appellant further contends that, granting *arguendo* that he can be held liable, his liability is only for the crime of attempted rape, as the result of the medical findings revealed that the victim did not suffer perineal lacerations and that it was possible that the male organ was not inserted at all into the victim's vagina. Moreover, considering that the victim in this case is a mental retardate with an I.Q. of 40, she cannot be expected to know the difference between a mere touching of the external area of her genitals and a successful penetration, however slight, as to consummate the crime of rape. The aforesaid arguments given by the appellant deserve scant consideration.

A freshly broken hymen is not an essential element of rape. Even if the hymen of the victim was still intact, the possibility of rape cannot be ruled out. The rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a

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[43] *People v. Manambay*, 466 Phil. 661, 680 (2004).

[44] *People v. De Guzman*, G.R. No. 117217, 2 December 1996, 265 SCRA 228, 245-246.

conviction for rape.[45] Also, the rupture of the hymen or vaginal laceration is not necessary for rape to be consummated.[46] It is settled that a mere touching, no matter how slight, of the *labia* or lips of the female organ by the male genitalia even without rupture or laceration of the hymen is sufficient to consummate rape. Full penetration is not required, as proof of entrance showing the slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient. In proving sexual intercourse, it is enough that there was the slightest penetration of the male organ into the female sex organ.[47]

Furthermore, a medical examination is not indispensable to the prosecution of a rape. Insofar as the evidentiary weight of the medical examination is concerned, we have already ruled that a medical examination of the victim, as well as a medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible, and this we find here to be the case.[48]

In the instant case, the medical findings revealed that the hymen of the complainant was still intact. Nevertheless, the same does not negate the fact of rape committed by the appellant against AAA, as the Medico-Legal Officer of the NBI who conducted the medical examination on AAA clearly explained that AAA's hymen is stretchable, meaning, AAA's hymen can accommodate an average-sized Filipino male organ in full erection without breaking the hymen.

More importantly, the victim positively identified the appellant as her assailant. That she had sexual intercourse with him was sufficiently established by her testimony before the court *a quo*. The victim, though a mental retardate, was able to describe how she was ravished by the appellant.

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[45] *People v. Dimacuha*, 467 Phil. 342, 350 (2004).

[46] *People v. Lerio*, 381 Phil. 80, 87 (2000).

[47] *People v. Pascua*, G.R. No. 151858, 27 November 2003, 416 SCRA 548, 553-554.

[48] *People v. Lerio*, *supra* note 46 at 88.

It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, as someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.[49] Besides, having the mental age level of a six-year-and-six-month-old normal child would even bolster her credibility as a witness, considering that a victim at such tender age would not publicly admit that she had been criminally abused and ravished unless that was the truth. For no woman, especially one of tender age, practically only a girl, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished to avenge her honor and to condemn a grave injustice to her.[50]

Moreover, the trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[51] In the case at bar, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of AAA's testimony, the same being clear, unequivocal and credible.

Given the foregoing, the prosecution's evidence has clearly established beyond doubt that AAA was mentally retarded because the results of the mental and the psychological tests showed

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[49] *People v. Toralba*, 414 Phil. 793, 800 (2001).

[50] *People v. Agravante*, 392 Phil. 543, 551 (2000).

[51] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

that she had a mental age equivalent to that of a six-year-and-six-month-old child. This Court has held in a long line of cases that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial desires of the accused, or even absent the circumstances of force or intimidation or the fact that the victim was deprived of reason or otherwise unconscious, the accused would still be liable for rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. **The rationale, therefore, is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.**[52]

Thus, this Court firmly believes that both the trial court and the Court of Appeals were correct in convicting the appellant for the crime of consummated rape and not merely attempted rape.

Finally, the argument of the appellant that the prosecution failed to prove beyond reasonable doubt that he knew of the victim's mental retardation cannot hold water.

Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10[53] **of the Revised Penal Code, as amended by Republic Act No. 8353**. An allegation in the information of such knowledge of the offender is necessary, as a crime can only be qualified by circumstances pleaded in the indictment. A contrary ruling would result in a denial of the

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[52] *People v. Itdang*, 397 Phil. 692, 704 (2000).

[53] ART. 266-B. *Penalties*. x x x.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

right of the accused to be informed of the charges against him, and hence a denial of due process.[54]

In this case, knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape was properly alleged in the Information filed against the appellant. The said Information states:

> On 16 May 1999, at [No.] x x x, x x x, x x x, within the jurisdiction of this Honorable Court, [appellant] Joseph Dela Paz did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, **knowing at the time that she was mentally disabled** x x x.[55] (Emphasis supplied.)

Such knowledge of the victim's mental retardation was sufficiently proven by the prosecution beyond reasonable doubt. The prosecution had established that appellant frequented the house of the victim because he was a friend and a drinking buddy of AAA's brother, CCC. The appellant was also living a door away from the house of the victim from the time that they came to know each other. The appellant and the victim also had conversations whenever the appellant visited her brother.

Worthy to note is the fact that AAA has an I.Q. of 40; thus, she does not belong to borderline cases of mental retardation, the I.Q. of which ranges from 70-89,[56] wherein it is difficult to determine whether the victim is of normal mind or is suffering from a mild mental retardation. Hence, as found by the trial court and the appellate court, AAA's mental retardation was clearly apparent and noticeable to people who had interactions with her like herein appellant. The appellant cannot therefore feign ignorance as regards AAA's mental condition.

All told, the prosecution was able to prove that the appellant is guilty beyond reasonable doubt of the crime of rape under

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[54] *People v. Magabo*, *supra* note 35 at 988-989.

[55] Records, p. 5.

[56] *People v. Dalandas*, *supra* note 36 at 696.

Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. Taking into consideration the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation,[57] the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court has no option but to impose on the appellant the supreme penalty of death.

With the enactment, however, of Republic Act No. 9346, the imposition of the death penalty has been prohibited. Accordingly, this Court affirms the ruling of the appellate court that the penalty to be meted to appellant is *reclusion perpetua*. The same is in accordance with Section 2 of Republic Act No. 9346, and as provided under Section 3 of the said law, the appellant shall not be eligible for parole under the Indeterminate Sentence Law.[58]

This Court likewise affirms the civil indemnity awarded by the Court of Appeals to AAA in accordance with the ruling in *People v. Sambrano*,[59] which states:

> As to damages, [this Court] held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000. Thus, the trial court's award of ₱75,000 as civil indemnity is in line with existing case law. Also, in rape cases moral damages are awarded without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of ₱50,000 as moral damages should also be increased to ₱75,000 pursuant to current jurisprudence on qualified rape. Lastly, exemplary damages in the amount of ₱25,000 is also called for, by way of public example, and to protect the young from sexual abuse.

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[57] Art. 266-B (10) of the Revised Penal Code, as amended by Republic Act No. 8353.

[58] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676; *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 718-719; *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 746.

[59] 446 Phil. 145, 161-162 (2003).

It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still ₱75,000.00.[60]

As a final point. This Court modifies the award of moral damages by the appellate court. We also find it proper to award exemplary damages to the victim. The appellate court merely imposed the sum of ₱50,000.00 as moral damages. To conform with the ruling in *People v. Sambrano*,[61] this Court increases the amount of moral damages from ₱50,000.00 to ₱75,000.00 and orders the appellant to also indemnify AAA in the amount of ₱25,000.00 as exemplary damages.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02164 dated 27 September 2006 finding herein appellant Joseph dela Paz guilty beyond reasonable doubt of one count of qualified rape committed against AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, knowing at the time that she was mentally retarded, and sentencing him to suffer the penalty of *reclusion perpetua*, instead of death, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, is hereby *AFFIRMED* with the *MODIFICATIONS* that the amount of moral damages awarded is increased from ₱50,000.00 to ₱75,000.00, and that appellant is also ordered to indemnify the victim, AAA in the amount of ₱25,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

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[60] *People v. Salome*, *supra* note 58 at 676; *People v. Quiachon*, *supra* note 58 at 719.

[61] *Supra* note 59 at 161-162.

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