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FROM

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 149189. September 3, 2008]

LETICIA T. FIDELDIA, *petitioner, vs.* SPOUSES RAUL and ELEONOR MULATO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REQUISITES.— Unlawful detainer is one of the two kinds of ejectment proceedings, which are summary proceedings for the recovery of physical possession, where the dispossession has not lasted for more than one year. In unlawful detainer cases, possession of the defendant was originally legal but became illegal due to the expiration or termination of the right to possess. For the purpose of bringing an unlawful detainer suit, two requisites must concur: (1) there must be failure to pay rent or comply with the conditions of the lease, and (2) there must be demand both to pay or to comply and vacate. The first requisite refers to the existence of the cause of action for unlawful detainer, while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued. Implied in the first requisite, which is needed to establish the cause of action of the plaintiff in an unlawful detainer suit, is the presentation of the contract of lease entered into by the plaintiff and the defendant, the same being needed to establish the lease conditions alleged to have been violated. Thus, in *Bachrach Corporation v. Court of Appeals*, the Court held that the evidence needed to establish

the cause of action in an unlawful detainer case is (1) a lease contract and (2) the violation of that lease by the defendant.

2. ID.; EVIDENCE; PRESENTATION OF; OFFER AND OBJECTION; OFFER OF EVIDENCE; FORMAL OFFER OF EVIDENCE, NECESSARY; RATIONALE. — Generally, documents merely attached to pleadings are not admissible in evidence. Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered". A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; PRIOR PHYSICAL POSSESSION IS NOT REQUIRED IN UNLAWFUL DETAINER CASES. — Unlike suits for forcible entry, prior physical possession is not required in unlawful detainer cases. However, it is still incumbent for the plaintiff to prove his or her right to possess the subject property, since the very issue in unlawful detainer cases is who between the plaintiff and the defendant has a better right to possess the property in question.

APPEARANCES OF COUNSEL

Camacho and Associates for petitioner.
Gualberto Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated 23 March 2001 of the Court of Appeals in CA-G.R. SP No. 62263 and its Resolution[2] dated 25 July 2001 denying petitioner Leticia T. Fideldia's (Leticia's) Motion for Reconsideration.

I

FACTS

The undisputed factual and procedural antecedents of this case are as follows:

Civil Case No. 459-BG: Action for Specific Performance against Petra Fideldia

Petra Fideldia (Petra) was then the registered owner of two lots situated in Poblacion Bauang, La Union, identified as Lot 4-B and Lot 4-C under Transfer Certificates of Title (TCTs) No. 21636 and No. 21637. On 8 March 1982, Petra executed a document, bearing the title Conditional Deed of Sale, selling the said properties to the spouses Ray and Gloria Songcuan (spouses Songcuan), who were among the lessees thereof.

The lots subject of the sale were cleared of lessees, except for the spouses Songcuan, who remained on the property. When the offer to pay the agreed price was refused, the spouses Songcuan filed before the Regional Trial Court (RTC) of Bauang, La Union, an action for specific performance against Petra and a certain Manuel L. Mangaser,[3] docketed as Civil Case

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Martin S. Villarama, Jr., and Eliezer R. de los Santos, concurring. *Rollo*, pp. 44-52.

[2] *Rollo*, p. 53.

[3] The exact participation of Manuel L. Mangaser was not specified in the pleadings in the case at bar.

No. 459-BG. During the pendency of the case, a notice of *lis pendens* was annotated at the back of TCTs No. 21636 and No. 21637 upon the instance of the spouses Songcuan.

On 4 November 1991, the RTC ruled in favor of the spouses Songcuan, to wit:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Songcuans against the defendants [Petra] Fideldia and Mangaser as follows:
>
> (1) Defendant [Petra] Fideldia —
>
> a) She is ordered to execute a document in due form conveying to the plaintiffs spouses Ray Songcuan and Gloria Songcuan full ownership of the property subject matter of the conditional contract of Sale (Exh. A and Exh. 4) as well as to deliver to the Songcuans the titles of Lot 4-B and Lot 4-C, and the said plaintiffs [spouses Songcuan] are likewise ordered to deliver the balance of the purchase price of ₱330,000.00 minus the costs of documentary stamps;
>
> b) Defendant [Petra] Fideldia is ordered to pay the Songcuans the following amounts: ₱11,400.00 as moral damages and hospital expenses; ₱5,000.00 as exemplary damage; ₱8,640.00 refund of rentals, ₱20,000.00 for repairs, *etc.* of the Fideldia building, and ₱5,000.00 attorney's fees and expenses of litigation mentioned herein;
>
> c) x x x x x x x x x
>
> d) The counterclaim of defendant [Petra] Fideldia against the plaintiffs [spouses Songcuan] is also dismissed.
>
> x x x x x x x x x
>
> (4) Defendant [Petra] Fideldia is ordered to pay the costs.[4]

Petra appealed the afore-quoted RTC Decision to the Court of Appeals. Her appeal was docketed as CA-G.R. CV No. 38855.

Sometime in 1994,[5] during the pendency of her appeal before the appellate court, Petra donated both properties to her daughters: Lot 4-B to Leticia and Lot 4-C to Vilma Fideldia (Vilma).

---

[4] Records, pp. 192-193.

[5] *Rollo*, p. 169.

On 21 March 1996, the Court of Appeals affirmed[6] the RTC Decision with modification. Its *fallo* reads:

> WHEREFORE, the appealed judgment is AFFIRMED with MODIFICATIONS that paragraph (1), subparagraph a) of the dispositive portion of said judgment is amended to the effect that parties should comply with Exhibits A-B and 4-A as quoted in the text of herein decision; and the award of moral damages is reduced to ₱8,000.00; the payment for hospital expenses is deleted; the amount of ₱2,800.00 is ordered returned to herein plaintiffs-appellees [spouses Songcuan]. The rest of the dispositive portion of said appealed decision remains undisturbed.

Still unsatisfied, Petra filed a Petition for Review with this Court, docketed as G.R. No. 124336. In a Resolution dated 5 August 1996, the Court denied the Petition since the issues raised were essentially factual and there was no sufficient showing that the findings of the Court of Appeals were not supported by the requisite quantum of evidence. The Court found no reversible error in the appellate court's Decision. The Motion for Reconsideration was denied with finality on 21 October 1996.

The Court's Resolution dated 5 August 1996 became final and executory on 4 December 1996. Consequently, the Decision dated 29 March 1996 of the Court of Appeals in CA-G.R. CV No. 38855 modifying the Decision dated 4 November 1991 in Civil Case No. 459-BG became final.

Thereafter, respondents spouses Raul and Eleonor Mulato (spouses Mulato), who were also originally lessees of the subject properties, negotiated with the spouses Songcuan for the lease of Lots 4-B and 4-C for ₱10,000.00 per month. Starting December 1996, the spouses Mulato began paying rentals to the spouses Songcuan, instead of to Petra.

Sometime in 1997,[7] Vilma donated Lot 4-C to her sister Leticia. Leticia had the donation registered, making her the registered

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[6] Penned by then Court of Appeals Associate Justice Ma. Alicia Austria Martinez (who is now a Member of this Court), with Associate Justices Pedro A. Ramirez and Bernardo LL. Salas, concurring. *Rollo*, pp. 93-111.

[7] *Rollo*, p. 169.

owner of both Lot 4-B and Lot 4-C under TCTs No. T-39541 and No. T-47083, respectively.

CA-G.R. SP No. 59257: Petition for *Certiorari* against the order deferring the execution of the judgment in Civil Case No. 459-BG

In the meantime, the spouses Songcuan filed with the RTC a motion for execution to enforce the Decision dated 29 March 1996 of the Court of Appeals in CA-G.R. CV No. 38855. The RTC granted the motion on 3 November 1997 and issued a Writ of Execution. However, the writ was twice returned unsatisfied. Thereafter, the RTC issued an *Alias* Writ of Execution on 13 April 1998. The *Alias* Writ of Execution was also returned unsatisfied.

On 27 July 1998, Petra filed with the RTC a Motion to Suspend the Execution of the 29 March 1996 Decision of the Court of Appeals in CA-G.R. CV No. 38855. The RTC issued an Order[8] denying said Motion and issued a Second *Alias* Writ of Execution on 12 August 1999. However, the Second *Alias* Writ of Execution, like the previous writs, was returned unsatisfied.

Petra filed a Motion for Reconsideration of the said RTC Order. In an Order dated 3 December 1999, the RTC granted Petra's Motion for Reconsideration, reversed its earlier Order, and suspended the execution of the 29 March 1996 Decision of the Court of Appeals in CA-G.R. CV No. 38855. It was now the turn of the spouses Songcuan to move for the reconsideration by the RTC of its Order dated 3 December 1999, but it was denied by the RTC in another Order dated 22 May 2000.

The spouses Songcuan, meanwhile, consigned to the RTC on 19 May 2000 the amount of ₱330,000.00 representing the balance of the purchase price for the two lots.

The spouses Songcuan then filed a Petition for *Certiorari* with the Court of Appeals seeking to annul the Order of 22

[8] The date of this Order is not available in the records of the case at bar.

May 2000 of the RTC deferring the execution of the judgment of the Court of Appeals in CA-G.R. CV No. 38855, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Their Petition was docketed as CA-G.R. SP No. 59257. The Court of Appeals, in its Decision dated 30 March 2001, granted[9] the Petition of the spouses Songcuan and annulled the RTC Order of 3 December 1999; and in its Resolution dated 11 December 2001, denied Petra's Motion for Reconsideration.

Petra, now joined by her daughter Leticia, filed a Petition for Review with this Court, docketed as G.R. No. 151352. On 29 July 2005, this Court rendered its Decision[10] affirming the 30 March 2001 Decision of the Court of Appeals in CA-G.R. SP No. 59257.

Civil Case No. 922: The unlawful detainer case, subject of the present petition

On 2 June 1999 (when Petra's Motion to Suspend the Execution of the 29 March 1996 Decision of the Court of Appeals in CA-G.R. CV No. 38855 was still pending resolution, but before the spouses Songcuan could pay the balance of the purchase price in the amount of ₱330,000.00), the spouses Mulato received a letter of demand from Leticia increasing the monthly rentals for the subject properties to ₱25,000.00, to be paid to Leticia; otherwise, the spouses Mulato must vacate the premises. When the spouses Mulato ignored her letter of demand, Leticia filed with the Municipal Trial Court (MTC) of Bauang, La Union, a complaint for unlawful detainer against them, which was docketed as Civil Case No. 922.

On 6 April 2000, the MTC rendered its Decision in favor of Leticia, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff [Leticia] and against the

[9] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ramon Mabutas, Jr. and Roberto A. Barrios, concurring.

[10] Penned by Associate Justice Antonio T. Carpio, with Chief Justice Hilario Davide and Associate Justices Leonardo A. Quisumbing, Consuelo Ynares-Santiago and Adolfo S. Azcuna, concurring.

defendant[s] [spouses Mulato] who is [sic] hereby ordered, to wit:

1. To vacate the subject premises and surrender possession of the same;
2. To pay the plaintiff [Leticia] the accumulated rental of ₱100,000.00 and monthly rental of ₱25,000.00 beginning September 1999 and every succeeding months thereafter until they vacate and surrender the premises to the plaintiff [Leticia] plus legal interest;
3. To pay the plaintiff [Leticia] attorney's fees in the amount of ₱25,000.00; and
4. Costs of litigation.[11]

According to the MTC, the Decision dated 29 March 1996 of the Court of Appeals in CA-G.R. CV No. 38855, although already final and executory, did not automatically transfer ownership of the properties to the spouses Songcuan. There were still the following acts that needed to be done:

1. The execution by Petra of the document in due form conveying to the spouses Songcuan full ownership of the property subject matter of the Conditional Contract of Sale;
2. The delivery by Petra of the TCTs of Lots 4-B and 4-C to the spouses Songcuan; and
3. The payment by the spouses Songcuan of the balance of the purchase price for the properties, in the amount of ₱330,000.00, minus the cost of documentary stamps.

According to the MTC, the document conveying ownership of the properties need not yet be executed because the Songcuan spouses had not complied with the order to pay to Petra the balance of the purchase price for the said properties in the sum of ₱330,000.00. Thus, ownership of the properties still remained with Petra and her successor-in-interest Leticia. It was only appropriate that the titles to the properties continue

[11] *Rollo*, p. 86.

to be registered in the name of Leticia, under TCTs No. T-39541 and No. T-47083. Being the registered owner, Leticia was entitled to the payment of the rent on the properties leased to the spouses Mulato in accordance with Articles 441[12] and 442[13] of the Civil Code. On the other hand, as the lessees of the leased premises, the spouses Mulato were bound to pay the rent therefor to the owner in accordance with Articles 1657[14] and 1240[15] of the Civil Code, and not to other persons not authorized by the rightful owner. Considering the failure of the spouses Mulato to comply with their obligation as lessees, Leticia, as the rightful owner of the properties, had the right, under Article 1673[16] of the Civil Code, to judicially eject them on the ground of nonpayment of the price stipulated.

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[12] Art. 441. To the owner belongs:

(1) The natural fruits;

(2) The industrial fruits;

(3) The civil fruits.

[13] Art. 442. Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

[14] Art. 1657. The lessee is obliged:

(1) To pay the price of the lease according to the terms stipulated;

(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;

(3) To pay the expenses for the deed of lease.

[15] Art. 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.

[16] Art. 1673. The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of lease under Articles 1682 and 1687, has expired;

The spouses Mulato filed an appeal with the RTC where it was docketed as Civil Case No. 1274-BG. On 22 September 2000, the RTC promulgated its Decision reversing the judgment of the MTC in Civil Case No. 922 and ruling thus:

IN VIEW THEREOF, the Court hereby renders judgment declaring the decision rendered by the court *a quo* dated April 6, 2000, as without legal basis and is hereby set aside and annulled and declaring herein Sps. Songcuan as the lessor[s] of herein appellants [spouses Mulato].

Insofar as the resolution of the Motion for Execution pending appeal, the same has become moot and academic considering that the basis of said motion which is the decision of the Court *a quo* has been reversed.

Without pronouncement as to cost.[17]

The RTC reasoned that the contract entered into by Petra and the spouses Songcuan, although denominated as a Conditional Contract of Sale, was absolute in nature, there being neither a stipulation reserving title to the vendor, Petra, until full payment of the purchase price; nor a grant to her of the right to unilaterally rescind the contract in case of nonpayment of the same. In an absolute sale, ownership of the thing sold passes on to the vendee upon constructive or actual delivery thereof. Hence, the ownership of Lot 4-B and Lot 4-C passed on to the spouses Songcuan, considering that the properties were delivered to them both constructively and actually. There was constructive delivery of the properties when the contract selling the same was executed on 8 March 1982, in favor of the spouses Songcuan, bearing no condition or reservation. There was actual delivery

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(2) *Lack of payment of the price stipulated*;

(3) Violation of any of the conditions agreed upon in the contract;

(4) When the lessee devotes the thing leased to any use or service not stipulated which causes the deterioration thereof; or if he does not observe the requirement in No. 2 of Article 1657, as regards the use thereof.

The ejectment of tenants of agricultural lands is governed by special laws.

[17] *Rollo*, p. 92.

when the spouses Songcuan took unconditional possession of the properties and leased the same to the spouses Mulato, who had been paying rent therefor to them. Given the foregoing, the RTC concluded that the sale of the properties by Petra to the spouses Songcuan was already perfected, resulting in the transfer of ownership thereof to the latter. The spouses Mulato now occupied the properties as the lessees of the rightful owners of the same, namely, the spouses Songcuan. Hence, there was no merit in Leticia's action for ejectment against the spouses Mulato.

Leticia filed a Petition for Review with the Court of Appeals, where it was docketed as CA-G.R. SP No. 62263. On 23 March 2001, the Court of Appeals promulgated its assailed Decision ruling in favor of the spouses Mulato and decreeing that:

> IN VIEW OF ALL THE FOREGOING, the instant petition for review is ordered DISMISSED and the assailed Decision of the Regional Trial Court in Civil Case No. 1274-BG is AFFIRMED. Costs against the petitioner [Leticia].[18]

The Court of Appeals agreed with the RTC that while the written agreement between Petra and the spouses Songcuan was entitled "Conditional Contract of Sale," it was in reality a perfected contract of sale. Neither is payment of the purchase price essential to the transfer of ownership of the property, as long as the same is delivered. The delivery operates to divest the vendor of title to the property, which may not be regained or recovered until and unless the contract is rescinded.[19] Since there was already a delivery of the properties to the vendees, spouses Songcuan, and there being no rescission of the contract of sale by the vendor, Petra, resultantly, the ownership of the properties had likewise been transferred to the former.

The Court of Appeals denied Leticia's Motion for Reconsideration in its assailed Resolution dated 25 July 2001.[20]

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[18] *Id.* at 52.

[19] *Philippine National Bank v. Court of Appeals*, 338 Phil. 795, 822 (1997).

[20] *Rollo*, p. 53.

Leticia seeks recourse from this Court via the Petition at bar.

II

ISSUES AND RULING

In her Petition, Leticia submits the following issues for consideration of this Court:

1. Whether or not the Court of Appeals erred in resolving the issue of ownership in an unlawful detainer case.

2. Whether or not the Court of Appeals erred in finding that the respondents spouses Mulato are the lessees of Ray and Gloria Songcuan in the absence of any evidence to support the same.[21]

Leticia contends that it was not necessary for the Court of Appeals to determine the issue of ownership of the properties, since she had already established the following facts:

1. Respondents Spouses Mulato are the lessees of petitioner Leticia and her mother, Petra;

2. Respondents Spouses Mulato failed to pay the monthly rentals as stipulated in the contract of lease; and

3. Respondents Spouses Mulato are not claiming ownership over the leased premises.[22]

The Court of Appeals validly focused on the matter of ownership of the lots in question in arriving at its Decision, since the 1997 Revised Rules of Court allows the trial court to rule on the issue of ownership in an ejectment case to resolve the issue of possession.[23] Nevertheless, this Court finds other

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[21] *Id.* at 175.

[22] Petitioner's Memorandum, *rollo*, p. 177.

[23] Relevant provisions of Rule 70 reads:

Section 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.

areas worth delving into if only to put things in a more proper perspective. Leticia's complaint in Civil Case No. 922 should have been denied by the MTC for failure of the plaintiff to prove her cause of action.

It bears to stress that the complaint filed by Leticia against the spouses Mulato in Civil Case No. 922 was for unlawful detainer. It was instituted after the finality of the 21 March 1996 Decision of the Court of Appeals in CA-G.R. CV No. 38855, but before the spouses Songcuan complied with the appellate court's order by consigning the balance of the purchase price for the said properties with the RTC.

An action for unlawful detainer is grounded on Section 1, Rule 70 of the Rules of Court which provides that:

> [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 x x x 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.

Unlawful detainer is one of the two kinds[24] of ejectment proceedings, which are summary proceedings for the recovery

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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.

The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court.

[24] The other kind of ejectment proceeding is that of forcible entry, and is governed by the same Rule 70 of the Rules of Court.

of physical possession, where the dispossession has not lasted for more than one year. In unlawful detainer cases, possession of the defendant was originally legal but became illegal due to the expiration or termination of the right to possess.[25]

For the purpose of bringing an unlawful detainer suit, two requisites must concur: (1) there must be failure to pay rent or comply with the conditions of the lease, and (2) there must be demand both to pay or to comply and vacate. The first requisite refers to the existence of the cause of action for unlawful detainer, while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued.[26] Implied in the first requisite, which is needed to establish the cause of action of the plaintiff in an unlawful detainer suit, is the presentation of the contract of lease entered into by the plaintiff and the defendant, the same being needed to establish the lease conditions alleged to have been violated. Thus, in *Bachrach Corporation v. Court of Appeals*,[27] the Court held that the evidence needed to establish the cause of action in an unlawful detainer case is (1) a lease contract and (2) the violation of that lease by the defendant.

An exhaustive review of the records of the instant Petition leads this Court to conclude that Leticia was not able to establish that she had a cause of action for unlawful detainer against the spouses Mulato.

Leticia did not prove to the satisfaction of this Court that a contract of lease existed between her and the spouses Mulato, much less, that the spouses Mulato violated the terms of such contract.

Firstly, Leticia never offered in evidence a lease contract with the spouses Mulato pertaining to the properties. Instead, she merely attached a lease contract to some of her pleadings.

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[25] *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 184 (2001).

[26] *Siapian v. Court of Appeals*, 383 Phil. 753, 761 (2000); *Cetus Development, Inc. v. Court of Appeals*, G.R. No. 77647, 7 August 1989, 176 SCRA 72, 80.

[27] 357 Phil. 483 (1998).

Generally, documents merely attached to pleadings are not admissible in evidence. Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered." A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.[28]

Secondly, the lease contract attached by Leticia to her pleadings does not even pertain to the properties subject of the case at bar. The lease contract she attached to her pleadings pertains to Lot 4-A, covered by TCT No. T-39503; while the properties involved herein are Lot 4-B and Lot 4-C covered by TCTs No. T-39541 and No. T-47083.

And thirdly, Leticia relies on alleged admissions made by the spouses Mulato that they were lessees of Leticia and her mother, Petra. The Court meticulously examined the records of the case, yet still failed to find any such admission. What the spouses Mulato admitted was that they were the lessees of Petra, and not of Leticia herself; and that they paid rentals to Leticia only because she collected the same on behalf of her mother.[29]

Without a contract of lease with Leticia, then the spouses Mulato could not have committed a violation of the same.

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[28] *Candido v. Court of Appeals*, 323 Phil. 95, 99 (1996); *Republic v. Sandiganbayan*, 325 Phil. 762, 787 (1996); *Vda. de Alvarez v. Court of Appeals*, G.R. No. 110970, 16 March 1994, 231 SCRA 309, 317-318; *Veran v. Court of Appeals*, G.R. No. L-41154, 29 January 1988, 157 SCRA 438, 443; *People v. Cariño*, G.R. No. 73876, 26 September 1988, 165 SCRA 664, 671; *People v. Peralta*, G.R. No. 94570, 28 September 1994, 237 SCRA 218, 226.

[29] *Rollo*, p. 209.

Leticia likewise failed to convince this Court of her right to possession of the subject property. Unlike suits for forcible entry, prior physical possession is not required in unlawful detainer cases.[30] However, it is still incumbent for the plaintiff to prove his or her right to possess the subject property, since the very issue in unlawful detainer cases is who between the plaintiff and the defendant has a better right to possess the property in question.[31]

Leticia's right to possession of the properties supposedly arose from the donations of the said properties to her by her mother, Petra, and sister, Vilma. However, the donations she invokes are highly dubious and questionable considering the dates when they were executed. Lot 4-B and Lot 4-C were donated by Petra to Leticia and Vilma, respectively, in 1994, three years after the RTC had already ruled against Petra in Civil Case No. 459-BG in 1991, which, during the pendency of Petra's appeal, was docketed as CA-G.R. CV No. 38855, with the Court of Appeals. Vilma would subsequently donate Lot 4-C to Leticia in 1997, after this Court had already issued its Resolution dated 5 August 1996 in G.R. No. 124336 summarily dismissing Petra's Petition challenging the 29 March 1996 Decision of the Court of Appeals in CA-G.R. CV No. 38855. The donations of the properties to Leticia were thus made even after findings by the courts that the said properties should already be delivered to the spouses Songcuan. Although the rulings of the court were not yet final or executory during the dates of donations of the properties to Leticia, the more prudent course of action, especially for the party against whom the judgment was rendered, would have been to suspend all transactions regarding the properties; at least, until the issues regarding their supposed sale to the spouses Songcuan were settled.

The Court also considers the notices of *lis pendens* annotated on TCTs No. 21636 and No. 21637 covering Lot 4-B and Lot 4-C, respectively, when Civil Case No. 459-BG for specific

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[30] *Maddamu v. Judge of Municipal Court of Manila*, 74 Phil. 230 (1943).

[31] *Times Broadcasting Network v. Court of Appeals*, G.R. No. 122806, 19 June 1997, 274 SCRA 366, 377.

performance was commenced by the spouses Songcuan against Petra before the RTC. These notices subsisted when the properties were donated to Leticia in 1994 and 1997, and the Deeds of Donations were registered with the Registry of Deeds. The notices were also carried over to the new certificates, *i.e.*, TCTs No. T-39541 and No. T-47083, covering the same properties issued to Leticia.

By virtue of the notices of *lis pendens* on the certificates of title, Leticia, as donee, was aware that the properties donated were still subject of litigation, and that she was bound by the outcome of the litigation subject of the *lis pendens*. As a transferee *pendente lite*, Leticia should have respected any judgment or decree which may be rendered for or against the transferor, Petra. Her interest was subject to the incidents or results of the pending suit, and her certificates of title will, in that respect, afforded her no special protection.[32] Thus, the donations of the properties in favor of Leticia and the certificates of title issued in her name, during the pendency of Petra's appeal of the judgment against her in Civil Case No. 459-BG, could not serve to evade the ensuing final decision in the pending litigation. Leticia, herself, was aware that far from being absolute, her title to the properties by virtue of the donation was tenuous and conditional on the reversal of the judgment in Civil Case No. 459-BG adverse to Petra, her mother and predecessor-in-interest (a condition which, as subsequent events would show, did not occur).

The Court gives scant consideration to Leticia's argument that spouses Mulato were unable to present evidence that they were, instead, the lessees of spouses Songcuan.

The spouses Mulato's submission of their alleged lease contract with the spouses Songcuan is as defective as Leticia's submission of her alleged lease contract with the spouses

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[32] *Toledo-Banaga v. Court of Appeals*, 361 Phil. 1006, 1018 (1999); *Yu v. Court of Appeals*, G.R. No. 109078, 26 December 1995, 251 SCRA 509, 513; *Tuazon v. Reyes*, 48 Phil. 844, 847 (1926); *Demontaño v. Court of Appeals*, G.R. No. L-30764, 31 January 1978, 81 SCRA 287; *Director of Lands v. Martin*, 84 Phil. 140, 143 (1949).

Mulato: both lease contracts were merely attached to their pleadings and not formally offered as evidence. However, for the MTC to grant Leticia's complaint for unlawful detainer, what was imperative was for her to prove that the spouses Mulato are *her* lessees and not merely to disprove the spouses Mulato's claim that they are *someone else's* lessees. He who alleges the affirmative of the issue has the burden of proof; and upon the plaintiff in a civil case, the burden of proof never parts.[33]

WHEREFORE, the instant Petition is *DENIED*. The Decision dated 23 March 2001 of the Court of Appeals in CA-G.R. No. 62263 and its Resolution dated 25 July 2001 are *AFFIRMED*. The complaint for unlawful detainer of petitioner Leticia T. Fideldia against the respondent spouses Raul and Eleonor Mulato is hereby *DENIED* for failure to prove cause of action. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Nachura, Reyes, and *Leonardo-de Castro,*[*] *JJ.*, concur.

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[33] *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998).

[*] Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Ma. Alicia Austria-Martinez per Raffle dated 20 August 2008.

FIRST DIVISION

[G.R. No. 151854. September 3, 2008]

PHILUX, INC. and MAX KIENLE, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and PATRICIA PERJES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RIGHT TO APPEAL; NATURE. — It is settled that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege that may be exercised only in the manner and in accordance with the provisions of the applicable law. Hence, a party who seeks to avail of the same must comply with the requirements of the rules, failing which the right to appeal is invariably lost.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; WHEN PERFECTED. — By explicit provision of law, an appeal from rulings of the Labor Arbiter to the NLRC must be perfected within ten (10) calendar days from receipt thereof, otherwise the same shall become final and executory. In case of a judgment involving a monetary award, the appeal shall be perfected only upon (1) payment of the required appeal fee, (2) posting of a cash or surety bond issued by a reputable bonding company and (3) filing of a memorandum of appeal. The mere filing of a notice of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal.

3. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; A CLIENT IS BOUND BY THE ACTS, EVEN MISTAKES, OF HIS COUNSEL IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTION. — The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court, in which case the remedy then is to reopen the case and allow

the party who was denied his day in court to adduce his evidence.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEALS INVOLVING MONETARY AWARDS; POSTING OF A CASH OR SURETY BOND BY THE EMPLOYER; EXPLAINED. — The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that *an appeal may be perfected only upon the posting of a cash or surety bond.* The language of the law is perfectly clear that the lawmakers intended the posting of a cash or surety bond by the employer to be an indispensable means by which an employer's appeal is perfected or completed. While the use of the word *may* makes the perfection of an appeal as optional on the part of the defeated party, but to do so the posting of an appeal bond is required by law. Evidently then, the posting of a bond is mandatory, and the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. The rationale was aptly explained by the Court in *Viron Garments Manufacturing Co., Inc. v. NLRC,* to wit: "The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims." While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the NLRC Rules of Procedure or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond or where the failure to comply with the requirements for perfection of appeal was justified.

APPEARANCES OF COUNSEL

Dela Rosa Tejero Nograles for petitioners.
The Solicitor General for public respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Procedure of the **Decision dated January 11, 2002**[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 62735* dismissing the petition for *certiorari* under Rule 65 filed by herein petitioners Philux, Inc. and Max Kienle. The petition for *certiorari* assailed the dismissal by the National Labor Relations Commission (NLRC) of the petitioners' appeal of the earlier Labor Arbiter's decision declaring herein private respondent Patricia Perjes to have been illegally dismissed and directing the petitioners to reinstate her and pay her backwages.

As culled from the Decision of the CA, the antecedent facts are as follows:

> The records disclose that the petitioner, Philux, Inc., is a corporation engaged in the manufacture and sale of wood furnitures; while private respondent Patricia (Patria) Perjes was a daily-paid regular employee of the latter occupying the position of saleslady assigned to the petitioner's showroom at SM South mall, Zapote, Alabang Road, Las Piñas City.
>
> On April 20, 1999, for failure of the petitioner-corporation to positively respond to the private respondent's demand incorporated in her letter dated October 20, 1998, the National Labor Union in behalf of the private respondent filed a Complaint before the Labor Arbiter docketed as NLRC Case No. 00-04-04757-99. The aforesaid Complaint prayed for the following reliefs:
>
> (a) Payment of monthly commission from June 1998 until final settlement of the case;
>
> (b) Payment of underpaid ₱50.00 from June 1998 up to November 20, 1998;
>
> (c) Payment of 7 days sick leave and 7 days vacation leave for 1998 based on management practice;

[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Edgardo P. Cruz and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 43-50.

(d) Payment of 13th month pay for the year 1997; and

(e) Payment of damages and attorney's fees.

On June 24, 1999, the private respondent filed a Manifestation and Motion to include Additional Complaint for illegal dismissal based on her transfer of work assignment from the petitioner's showroom in SM Las Piñas to SM Megamall, EDSA, Mandaluyong City. The private respondent demanded her reinstatement to her former position with full backwages from May 12, 1999 up to her actual reinstatement without loss of seniority rights and other privileges.

Upon order of the Labor Arbiter, the parties submitted their respective position papers.

In her position paper, the private respondent asserted her right for payment of commission, 13th month pay, and overtime pay, the same being based on existing laws. She also claimed that the deduction of ₱50.00 from her basic salary was likewise illegal, there being no written authorization therefore.

The private respondent insisted that she never abandoned her work. Her failure to report for work was with a valid reason, *i.e.*, she had to look after her then sick brother who had suffered hypertensive intra-cerebral bleeding and pneumonia. Moreover, she allegedly needed to work near his place of abode. She lives in Bo. San Vicente, San Pedro, Laguna and it would take her 2 to 3 hours travel time, more or less, to and from her new post. Besides, petitioners' decision to transfer her to SM Megamall was purely harassment, especially so when it came to know that she has filed the aforementioned claims for payment.

On the other hand, the petitioners alleged that on June 8, 1998, the management suspected an anomaly in the reported sales of its showroom at SM South Mall then manned by Francis Otong and the private respondent. Petitioner Max Kienle reported the matter to the police of Almanza Uno, Las Piñas city. Thenceforth, an investigation was conducted where Francis Ong and the private respondent admitted in writing the following:

1. that Francis Otong had been manipulating the sales record of the petitioner with the knowledge and consent of the private respondent, enabling them to pocket the sum of ₱460,167.79;

2. That the management for humanitarian reason accepted the admission xxx and their offer of re-payment by payroll deductions.

3. That the private respondent authorized in writing the deductions from her payroll to be applied to the account of Mr. Otong with the petitioner. Mr. Otong promised to reimburse the private respondent whatever amount deducted from the latter.

4. That with their written consent, starting June 15, 1998, the petitioner deducted the amount of ₱50.00 from the private respondent's daily basic salary plus her commission.

Hence, according to the petitioners, the claims of the private respondent have no basis at all. The deductions made against her salary were authorized. She was not required to work continuously for 9 hours and the management had no control as regards the duration of her break time. Ergo, she was not entitled to overtime pay. Her 13th month pay for 1997 was already paid. As regards her claim of leave payments, she admitted in her position paper that the amount representing 5 days sick leave and 5 days vacation leave were already remitted to her; while her claim for additional 2 days each was without basis in law and in fact. Also, the private respondent's claim for damages and attorney's fees has no merit, her termination being an act of self-defense of the petitioner so as to avert unnecessary losses for unauthorized transaction.

The management likewise decided to transfer the private respondent to its Megamall showroom so that she could be supervised by other Philux employees, unlike in the South Mall where most of the time she was alone. The move by the petitioner was purposely made to avert recurrence of losses. Moreover, her transfer was sought because of her propensity to be absent for flimsy reasons which resulted in not opening the store on time and/or leaving the store manned only by one person. Such was allegedly against the contract of employment of the private respondent with the petitioner. Thus, the questioned transfer is not without basis. On the contrary, the private respondent's willful disobedience constitutes a valid ground for termination of her employment.[2]

In a decision dated June 30, 2000,[3] the Labor Arbiter rendered judgment in private respondent's favor. In part, the decision states:

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[2] *Id.*, pp. 44-46.

[3] *Id.*, pp. 51-57.

It appears that complainant and co-employee Francis Otong were involved in a violation of company policy. However, management admittedly condoned their offense and the parties agreed to a schedule of salary deductions so that complainant and Otong will be able to pay their financial liabilities to the company.

Complainant having been totally condoned, management is estopped from doing further acts which are deemed prejudicial to her interest, thus her transfer to another branch which will cause inconvenience to her and against her will and consent amount to constructive illegal dismissal.

Thus, complainant is entitled to reinstatement to her former position and station and full backwages until her actual reinstatement, computed below as follows:

May 12, 1999 to June 30, 2000 = 13.633 months
Basic salary: ₱ 250.00

1.	Salaries and Wages ₱ 250.00 x 26 days x 13.633 months	88,614.50
2.	13th Month Pay ₱ 88,614.50/12	7,384.54
3.	Service Incentive Leave Pay ₱ 250.00 x 5 days x 13.633/12	1,420.10
	TOTAL	₱ 97,419.14

As for the money claims, respondent have explained that they were the result of the schedule of salary deductions agreed upon by both parties pursuant to the condonation of offense as discussed above.

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed and respondent corporation is hereby directed to reinstate her and pay her backwages as computed above.

SO ORDERED.

A copy of the aforesaid Labor Arbiter's decision was received on July 14, 2000 by the petitioners. The latter filed a Motion for Reconsideration[4] on July 24, 2000 and private respondent

[4] *Id.*, pp. 63-67.

filed an Opposition[5] thereto. In its Resolution dated August 31, 2000[6] the NLRC treated the motion for reconsideration as an appeal from the Labor Arbiter's decision but dismissed the same for failure of the petitioners to post a bond as mandated by law.

The petitioners then filed a Motion to Reinstate Appeal dated September 25, 2000[7] alleging that this failure to post an appeal bond was due to the absence of the officers of the corporation in the country at the time the appeal was filed. Attached to the motion was a *supersedeas* bond[8] of the same date.

On October 24, 2000, the NLRC denied by Resolution[9] the petitioners' motion to reinstate appeal which it treated as a motion for reconsideration of the dismissal of their appeal on the ground that while a surety bond was posted, the same was filed beyond the reglementary period to appeal.

Thereafter, the petitioners filed a petition for *certiorari*[10] under Rule 65 of the Rules of Court with the CA which was docketed as *CA-G.R. SP No. 62735.*

In its herein assailed Decision dated January 11, 2002,[11] the CA dismissed the aforementioned petition for lack of merit, in effect affirming the impugned resolutions of the NLRC.

Hence, the petitioners are now before this Court *via* the instant petition for review under Rule 45. They contend that the CA committed serious error by inflexibly applying a stringent interpretation of a mere procedural rule such as the posting of an appeal bond within the ten (10)-day period provided by law.

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[5] *Id.*, pp. 68-74.

[6] *Id.*, pp. 77-78.

[7] CA Record, pp. 110-112.

[8] *Id.*, p. 106.

[9] *Rollo*, pp. 80-81.

[10] CA Record, pp. 2-18.

[11] *Supra* at note 1.

On April 15, 2002, we resolved to require the private respondent, through the labor union representative, to comment on the petition.[12] A copy of the Resolution having been returned unserved, the Court subsequently required service thereof to the private respondent herself. Upon private respondent's failure to file a comment, the latter, by Resolution,[13] was required to show cause why she should not be disciplinarily dealt with or be held in contempt. Subsequently, by Resolution dated April 23, 2003,[14] the Court imposed on the private respondent a fine or a penalty of imprisonment if the fine is not paid, and to comply with the earlier Resolution requiring explanation and comment, within ten days from notice. Still failing to comply with the aforementioned resolution, the Court, on September 17, 2003, resolved to inform the private respondent that she is deemed to have waived the filing of the comment and that the case shall forthwith be resolved on the basis of the pleadings submitted by the petitioners.[15]

The petition has no merit.

It is settled that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege that may be exercised only in the manner and in accordance with the provisions of the applicable law.[16] Hence, a party who seeks to avail of the same must comply with the requirements of the rules, failing which the right to appeal is invariably lost.

By explicit provision of law, an appeal from rulings of the Labor Arbiter to the NLRC must be perfected within ten (10) calendar days from receipt thereof, otherwise the same shall become final and executory.[17] In case of a judgment involving

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[12] *Id.*, p. 82.

[13] *Id.*, p. 89.

[14] *Id.*, p. 90.

[15] *Id.*, p. 92.

[16] *Stolt-Nielsen Marine Services, Inc. v. NLRC*, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 527.

[17] Article 223 of the Labor Code, as amended, sets forth the rules on appeal from a Labor Arbiter's monetary award, thus:

a monetary award, the appeal shall be perfected only upon (1) payment of the required appeal fee, (2) posting of a cash or surety bond issued by a reputable bonding company and (3) filing of a memorandum of appeal.[18] The mere filing of a notice

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ART. 223. Appeal. — Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission, in the amount equivalent to the monetary award in the judgment appealed from.

x x x x x x x x x

[18] Rule VI of the New Rules of Procedure of the NLRC which implements Article 223 of the Labor Code pertinently provides the following:

Section. 1. Periods of Appeal.— Decisions, awards, or orders of the Labor Arbiter and the POEA Administrator shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders of the Labor Arbiter or of the Administrator, and in case of a decision of the Regional Director or his duly authorized Hearing Officer within five (5) calendar days from receipt of such decisions, awards or orders xxx

Section 3. Requisites for Perfection of Appeal.— (a) The appeal shall be filed within the reglementary period as provided in Sec. 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Sec. 5 of this Rule; shall be accompanied by memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisite afore-stated shall not stop the running of the period for perfecting an appeal.

Section 5. Appeal Fee.— The appellant shall pay an appeal fee of One hundred (₱100.00) pesos to the Regional Arbitration Branch, Regional Office, or to the Philippine Overseas Employment Administration and the official receipt of such payment shall be attached to the records of the case.

Section 6. Bond.— In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award,

of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal.[19]

In this case, the petitioners, through their former counsel, who received a copy of the decision of the Labor Arbiter on July 14, 2000, filed a Motion for Reconsideration on July 24, 2000 which was the last day to perfect an appeal. No cash or surety bond, however, was posted by the petitioners. The motion having been treated as an appeal by the NLRC, the lack of a bond is fatal to the said appeal. The judgment in question involves a monetary award and an appeal therefrom by the employer may be perfected only upon the posting of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from.

Clearly then, the CA acted in accordance with law in dismissing the petition for *certiorari* assailing the dismissal by the NLRC of the petitioners' appeal for failure of the latter to post the required appeal bond.

The petitioners, however, argue that they should not suffer the consequences of their former counsel's negligence and/or gross ignorance of the rules of procedure because gross injustice would result. While the general rule is that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of the client, the petitioners invoke exceptions thereto, *i.e.,* where the reckless or gross negligence of counsel would deprive the client of due process of law, or where it

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an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

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The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.

Section 7. No extension of Period.- No motion or request for extension of the period within which to perfect an appeal shall be allowed.

[19] *Id.,* Section 3.

would result in the outright deprivation of the client's property through a technicality.

Unfortunately, petitioners' case does not fall under the exception but rather is squarely within the ambit of the general rule. The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[20] The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court, in which case the remedy then is to reopen the case and allow the party who was denied his day in court to adduce his evidence.[21]

Through their present counsel, the petitioners want us to nullify the decision of the CA and, in effect, the resolutions of the NLRC dismissing their appeal on the ground that their former counsel was grossly negligent and ignorant of the NLRC rules of procedure. This ground cannot be lightly invoked. Otherwise, there would never be an end to a suit so long as new counsel would be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned.[22]

In *Salonga v. Court of Appeals*[23] cited by petitioners, we found therein petitioner's former counsel only guilty of simple negligence and not gross negligence as would amount to a deprivation of petitioner's right to due process, although said counsel's failure to file a timely answer has led to a judgment by default against his client.

The decision in *Legarda v. Court of Appeals*[24] also invoked by petitioners, that the alleged reckless, inexcusable and gross negligence of counsel resulted in the deprivation of the client's

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[20] *Producer's Bank v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 192.

[21] *Id.*

[22] *Balgami, et al. v. Court of Appeals*, G.R. No. 131287, December 9, 2004, 445 SCRA 591, 600.

[23] G.R. No. 111478, March 13, 1997, 269 SCRA 534.

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

property without due process of law, was modified on reconsideration in our *en banc* Resolution dated October 16, 1997.[25] The Court held:

> xxx as long as a party was given the opportunity to defend her interests in due course, she cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. The chronology of events shows that the case took its regular course in the trial and appellate courts but Legarda's counsel failed to act as any ordinary counsel should have acted, his negligence every step of the way amounting to "abandonment," in the words of the *Gancayco* decision. Yet, it cannot be denied that the proceedings which led to the filing of this case were not attended by any irregularity. The judgment by default was valid, so was the ensuing sale at public auction. If Cabrera was adjudged highest bidder in said auction sale, it was not through any machination on his part. All of his actuations that led to the final registration of the title in his name were aboveboard, untainted by any irregularity.
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> The *Gancayco* decision makes much of the fact that Legarda is now "consigned to penury" and, therefore, this Court "must come to the aid of the distraught client." It must be remembered that this Court renders decisions, not on the basis of emotions but on its sound judgment, applying the relevant, appropriate law. Much as it may pity Legarda, or any losing litigant for that matter, it cannot play the role of a "knight in shining armor" coming to the aid of someone, who through her weakness, ignorance or misjudgment may have been bested in a legal joust which complied with all the rules of legal proceedings.[26]

In *Escudero v. Dulay*,[27] the Court sustained therein petitioners' contention that the general rule should not be applied automatically to their case as their trial counsel's blunder in procedure and **gross** ignorance of existing jurisprudence changed their cause of action and violated their substantive rights. The

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[25] G.R. No. 94457, October 16, 1997, 280 SCRA 642.

[26] *Id.*, pp. 657-660. Also cited in *Producer's Bank v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185.

[27] G.R. No. 60578, February 23, 1988, 158 SCRA 69, 77.

Court likewise held that where the application of this rule of procedure will result in a **manifest** failure or miscarriage of justice, the rule may be relaxed.

In the light of the standards set in the above-cited cases and considering that the petitioners herein were given full opportunity to be heard and present their side to refute private respondent's claims against the corporation in the proceedings before the labor arbiter, the failure of petitioners' former counsel to post the bond amounts to a simple, not gross, negligence that will warrant the application of the exception to the general rule that a client is bound by the acts or mistakes of his counsel.

The petitioners assert as well that their subsequent posting of the bond on September 25, 2000 constituted good faith on their part to comply with the requirement for perfecting an appeal under Article 223 of the Labor Code and the NLRC Rules of Procedure.

Petitioners' assertion is untenable.

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that *an appeal may be perfected only upon the posting of a cash or surety bond*.[28] The language of the law is perfectly clear that the lawmakers intended the posting of a cash or surety bond by the employer to be an indispensable means by which an employer's appeal is perfected or completed. While the use of the word *may* makes the perfection of an appeal as optional on the part of the defeated party, but to do so the posting of an appeal bond is required by law.[29] Evidently then, the posting of a bond is mandatory, and the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional.[30] The *rationale* was aptly explained

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[28] *Borja Estate v. Spouses Ballad,* G.R. No. 152550, June 8, 2005, 459 SCRA 657, 667.

[29] *Id.,* pp. 667-668.

[30] *Id.,* p. 668.

by the Court in *Viron Garments Manufacturing Co., Inc. v. NLRC*,[31] to wit:

> The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.

While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the NLRC Rules of Procedure or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond [32] or where the failure to comply with the requirements for perfection of appeal was justified.[33]

Here, the negligence and/or ignorance of the rules of petitioners' former counsel is not sufficient justification for their failure to comply with the posting of the bond within the reglementary period. Neither can petitioners' subsequent but belated posting of the bond be considered as substantial compliance warranting the relaxation of the rules in the interest of justice.

In *Ong v. Court of Appeals*,[34] we held that in the instances where there was substantial compliance, the appellants, at the very least, exhibited willingness to pay by posting a partial bond or filing a motion for reduction of bond all within the 10-day period provided by law. In the present case, no such willingness was exhibited by petitioners as neither a full nor a partial appeal bond was filed within the reglementary period.

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[31] G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342.

[32] *Ong v. Court of Appeals*, G.R. No. 152494, September 22, 2004, 438 SCRA 668, 678.

[33] *Supra* at note 28, p. 669.

[34] *Supra* at note 32.

As correctly noted by the CA in its assailed Decision:

Be it noted that the petitioners received the Decision of the Labor Arbiter dated June 30, 2000 on July 14, 2000. The petitioners filed their motion for reconsideration which the NLRC treated as an appeal on July 24, 2000, sans the required bond. On August 31, 2000, the NLRC resolved to dismiss the appeal for failure to post the bond as mandated by law. It was only upon receipt of the aforesaid Resolution on September 15, 2000, that the petitioners were prompted to post the appeal bond. As a matter of fact, the filing thereof was further delayed as it was made only on September 25, 2000, ten (10) days after receipt of the Resolution. Obviously, the petitioner never intended to post the bond as it awaited two (2) months, more or less, from July 14, 2000, before it took the necessary steps to file the same. The petitioners' allegation that their signing officers were at that time out of the country does not justify their failure to file the same.[35]

Thus, in this case, since there was no appeal bond filed within the ten (10)-day period provided by law for the perfection of appeal, no appeal from the decision of the Labor Arbiter was perfected. Accordingly, said decision of the Labor Arbiter became final and executory and, therefore, immutable. Hence, the NLRC was correct in dismissing the petitioners' appeal therefrom. And *a fortiori*, so was the CA.

On a final note, we reiterate our pronouncement in *Borja Estate v. Spouses Ballad*,[36] thus:

It bears stressing that the bond is *sine qua non* to the perfection of appeal from the labor arbiter's monetary award. The requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. The failure of the petitioners to comply with the requirements for perfection of appeal had the effect of rendering the decision of the labor arbiter final and executory and placing it beyond the power of the NLRC to review or reverse it. As a losing party has the right to file an appeal within the prescribed

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[35] *Rollo*, pp. 49-50.

[36] *Supra* at note 28, p. 670.

period, so also the winning party has the correlative right to enjoy the finality of the resolution of his/her case.

WHEREFORE, the instant petition is *DENIED* and the Decision dated January 11, 2002 of the Court of Appeals is hereby *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Azcuna, JJ.,* concur.

FIRST DIVISION

[G.R. No. 157106. September 3, 2008]

ROMULO TINDOY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL TO THE SUPREME COURT BY WAY OF A PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS. — Under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, an appeal to this Court by way of a petition for review on *certiorari* should raise only questions of law which must be distinctly set forth in the petition. Of course, there are exceptions to this rule. Thus, the Court may be minded to review the factual findings of the CA only in the presence of any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the

judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURTS, GENERALLY ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL. — Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, the Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. The reason therefor is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.

APPEARANCES OF COUNSEL

Campanilla Ponce Law Firm for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

By this petition for review, petitioner Romulo Tindoy seeks the annulment and setting aside of the Decision[1] dated April 25, 2002 of the Court of Appeals (CA), as reiterated in its

[1] Penned by Associate Justice Eloy R. Belo, Jr. (ret.), with Associate Justices Godardo A. Jacinto and Rebecca De Guia-Salvador, concurring; *rollo*, pp. 142-148.

Resolution[2] of February 6, 2003, in *CA-G.R. CR No. 22574*, affirming an earlier decision of the Regional Trial Court (RTC) of Pasig City, Branch 167 which adjudged the petitioner guilty beyond reasonable doubt of the crime of Homicide.

The facts:

On August 15, 1995, herein petitioner, SPO1 Romulo Tindoy, together with his fellow police officers PO1 Manuel Fernandez (Fernandez) and PO3 Ariel Sanchez (Sanchez), was charged before the RTC of Pasig City with the crime of Homicide, allegedly committed, per the indicting Information[3] docketed as Criminal Case No. 108640, as follows:

> That on or about the 29th day of August 1993 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and inflict personal violence upon the person of one Dominador Viernes, thereby causing him to sustain mortal injuries which directly caused his death.
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> CONTRARY TO LAW.

When arraigned, the three accused, assisted by counsel, entered a plea of "Not Guilty." In time, trial ensued.

In the ensuing trial, the prosecution presented in evidence the testimonies of Consolacion Viernes, mother of the victim Dominador Viernes, Elsie Fernandez (Elsie), common-law wife of the victim and alleged eyewitness, Dr. Florante Baltazar, the designated Medico-Legal Officer of Bulacan who performed the autopsy on the cadaver of the victim, Dr. Raul Palma, the neurosurgeon who examined the victim when he was brought to the Makati Medical Center for a CT-scan, and Dr. Nestor Bautista, the neurologist who examined the images imprinted in and made the official findings of the result of the CT-scan.

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[2] *Id.* at 160.

[3] *Id.* at 75.

For its part, the defense adduced in evidence the testimonies of petitioner and his co-accused PO3 Sanchez, as well as Dr. Eugenio Alonzo, the physician who attended to the couple at the Rizal Medical Center, Antonio Aleviado Sr., a *Barangay Tanod*, Sandro Salve, and Elias Abaño, an alleged eyewitness to the couple's quarrel before the arrival of the police.

It is not disputed that in the early evening of August 29, 1993, petitioner, together with PO1 Fernandez and PO3 Sanchez responded to a call for police assistance regarding a case of domestic violence. It was reported that the victim was beating his common-law wife Elsie at their residence at Block 72, Lot 36, Purok 5, Valdez St., Upper Bicutan, Taguig.

When the policemen arrived at the couples' residence the victim had already left the house to buy cigarettes at a nearby store. The couple was nonetheless invited to the police station for questioning. Thereafter, the couple was brought to the Rizal Medical Center where the couple was examined for injuries. Elsie was released that same evening while the victim was detained overnight and released only in the afternoon of the following day August 30, 1993.

On August 31, 1993, the victim was rushed to the Fort Bonifacio Hospital complaining of chills and severe headache. Upon recommendation of the attending physician, the victim was brought to the Makati Medical Center for a CT-scan.

On September 2, 1993 the victim died due to traumatic head injuries. The autopsy conducted by Dr. Florante Baltazar yielded the following findings:

F I N D I N G S:

Fairly developed, fairly nourished male cadaver in *rigor mortis* with postmortem lividity over the dependent portions of the body. Conjunctivae, lips and nailbeds were pale. There were needle puncture marks at the dorsum of right hand.

EXTERNAL INJURIES: HEAD AND NECK:

1) Healed abrasion, right frontal region, 6.5 cms. from anterior midline, measuring 1.5 cms x 0.4 cm.

2) Hematoma, right peri-orbital region, 4.5 cms. from anterior midline, measuring 7 cms. x 4.5 cms.

3) Healed abrasion, right supra-orbital region, 4 cms. from anterior midline measuring 0.4 cm x 0.5 cm.

4) Healed abrasion, right lateral aspect of the neck, 8 cms. from midline measuring 2 cms x 0.2 cm

-Over-

C O N C L U S I O N:

Cause of death is traumatic injury, head.[4]

From the foregoing admitted or undisputed facts, the prosecution and the defense presented conflicting versions as to how the fatal head injuries were sustained by the victim.

According to Elsie, the lone eyewitness for the prosecution when the couple was invited to the police station, the victim refused to go with the policemen commenting, "*Wala kayong pakialam, away mag-asawa ito*" and informed the policemen that he is a military man. In the end the policemen prevailed and the couple was brought to the Taguig police sub-station. While being frisked by PO3 Sanchez, the victim remarked, "*Wala akong dala at sundalo ako*." To this PO1 Fernandez commented "*Sundalong Kanin*." The victim's immediate retort *Hindi ako ganoon* infuriated PO1 Fernandez who punched the victim on the head causing the latter to fall and hit his head against the wall. Petitioner then picked the victim up from the floor and together with PO1 Fernandez and PO3 Sanchez dragged the victim to the comfort room. From the comfort room door Elsie saw the three policemen throw fistic blows on the head of the victim with each hand held by petitioner and PO3 Sanchez. Upon seeing her husband's predicament, Elsie pleaded with the station commander Lieutenant Romeo De Castro to stop the three policemen from beating the victim but her pleas landed on deaf ears. The mauling lasted for three to five minutes.[5] Thereafter, the couple was brought to the Rizal Medical Center

[4] Records, p. 10.

[5] TSN, November 8, 1996, pp. 7-9.

where the victim received treatment. Elsie was then released while the victim was detained overnight and released only in the afternoon of the following day, August 30, 1993.

Elsie denied having hit her husband during their argument. Her narration of what transpired between her and the victim is contained in her sworn statement which was also admitted in evidence.[6]

The defense has its own account of what purportedly actually transpired.

Petitioner and SPO3 Sanchez denied having manhandled the victim. They insisted that it was Elsie who inflicted the fatal injuries on the victim when she hit the latter with a piece of 2x2 wood during their quarrel. According to petitioner, when they arrived at the couple's house to respond, to a domestic violence report, they were joined by a *barangay tanod* prosecution witness Antonio Aleviado. They found the victim drunk and had a bruise on his right eye. Elsie, on the other hand, had a hematoma on her face. The policemen admitted that the victim resisted going to the police station but added that they did not take such resistance against the victim because the latter eventually joined them. After the investigation, the policemen took the couple to the Rizal Medical Center for treatment. The defense underscored the fact that when the victim was asked by Dr. Eugenio Alonzo where he got the bruise on his left eye the victim replied that his wife hit him with a piece of wood.

On July 31, 1998, the trial court rendered its decision[7] finding the petitioner and his co-accused guilty of the crime of Homicide. Dispositively, the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused SPO1 ROMULO TINDOY, PO3 MANUEL FERNANDEZ and PO3 ARIEL SANCHEZ all "GUILTY" beyond reasonable doubt of the offense of Homicide defined and penalized

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[6] Records, pp. 7-8.

[7] *Rollo*, pp. 77-87.

under Article 249 of the Revised Penal Code and each of them is sentenced to an indeterminate penalty of imprisonment of Eight (8) Years and one (1) Day of *prision mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *reclusion temporal*, as maximum; to indemnify the offended party in the amount of ₱ 71, 900.00, by way of actual damages; to suffer all accessory penalties consequent thereto; and, to pay the costs.

SO ORDERED.

Unable to accept their conviction, the three policemen went on appeal to the CA in *CA-G.R. CR No. 22574*, insisting on their innocence and arguing that the trial court committed reversible error in convicting them instead of the real offender, prosecution witness Elsie.

During the pendency of the appeal, petitioner's co-accused PO1 Fernandez and PO3 Sanchez went into hiding and were, thus, stripped of their right to appeal pursuant to Section 8, paragraph 2, Rule 124 of the Revised Rules on Criminal Procedure.

On April 25, 2002, the CA rendered its Decision[8] which affirmed that of the trial court. With his motion for reconsideration having been denied by the same court in its resolution of February 6, 2003, petitioner is now with this Court contending that the CA committed reversible error in not finding that the trial court misappreciated the evidence presented during trial.

As it were, petitioner would have the Court review once more the factual determinations of the trial court, as affirmed by the CA. Under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, an appeal to this Court by way of a petition for review on *certiorari* should raise only questions of law which must be distinctly set forth in the petition. Of course, there are exceptions to this rule. Thus, the Court may be minded to review the factual findings of the CA only in the presence of any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a

[8] *Supra* note 1.

misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[9]

Perusal of the record shows that, none of the above exists in this case. Nonetheless, we shall address petitioner's lament.

Petitioner contends that the two courts below erred in giving full faith and credit to the testimony of the principal prosecution witness, Elsie. According to him the subject testimony was faulty, unsubstantiated, uncorroborated and coming from a witness who may as well be the most likely suspect. Petitioner maintains that it was Elsie who caused the fatal injury to the victim when she hit the latter on the head with a piece of wood during their argument.

We are not persuaded.

We see no reason to doubt the positive testimony of Elsie. As aptly observed by the trial court the testimony was both convincing and credible:

> Convincingly, Elsie Fernandez narrated how PO1 Manuel Fernandez hit her husband with fist blows on the right forehead and pushed him against the concrete wall, with the right forehead of Viernes hitting the concrete wall. After SPO1 Romulo Tindoy and SPO3 Ariel Sanchez assisted Dominador Viernes to be able to stand up, he was thereafter led to the comfort room just beside the investigation room. From the door Elsie Fernandez saw the three (3) accused pushing the head of Dominador Viernes against the urinary bowl, with PO1 Fernandez also hitting Viernes on the abdomen, while SPO1 Tindoy and SPO3

[9] *Gonzales v. Court of Appeals*, 358 Phil. 806, 821 (1998); *Polotan, Sr. v. Court of Appeals*, 357 Phil. 250, 256-257 (1998). See also *Lacanilao v. Court of Appeals*, 330 Phil. 1074, 1079-1080 (1996).

Sanchez respectively holding with one hand both hands of Viernes and hitting the latter's head with the other hand.[10]

Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, the Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. The reason therefor is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.[11]

Elsie's testimony that the victim was mauled is corroborated by the three (3) doctors who examined the victim, namely: Dr. Raul Palma, Dr. Nestor Bautista and Dr. Florante Baltazar.

Dr. Raul Palma, the neurosurgeon who examined the victim when he was brought to the Makati Medical Center for a CT-scan testified that the victim sustained contusion hemorrhage in both frontal and temporal regions of his brain and had two fractures, linear fractures and a non-displaced fractures on the right and left regions of the skull. Dr. Palma opined that the injuries sustained by the victim were probably caused by multiple hard fist blows against the head.[12]

Dr. Nestor Bautista, the neurologist who examined the images imprinted in and made the official findings of the result of the CT-scan testified that the victim had sub-arachnoid hemorrhage and fronto-temporal brain contusion which could have been caused by a blow, shaking of the victim's head or the head was hit against the wall. He added that the victim's brain was, "*medyo nabugbog*."[13]

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[10] *Rollo,* p. 84.

[11] *People v. Laceste*, G.R. No. 127127, July 30, 1998, 293 SCRA 397.

[12] TSN, January 8, 1997, p. 5.

[13] TSN, February 19, 1997, p. 6.

Lastly, Dr. Florante Baltazar testified that the fatal injury was the internal injury which is a fracture on the right frontal bone caused by multiple blows inflicted on the victim simultaneously and not by a single blow.[14]

To our mind, petitioner's posturing that it was Elsie who caused the death of the victim by hitting the latter with the piece of wood is a futile attempt to skirt criminal liability.

As we see it, the defense failed to present any witness who actually saw Elsie hit the victim with a piece of wood. Neither has evidence been presented to show the number of times the victim was supposed to be hit by Elsie. Even if the Court were to assume for the sake of argument that Elsie did hit the victim with a piece of wood, there is no proof that same could not have produced such severe multiple head injuries as sustained by the victim. Verily, Dr. Alonzo, a defense witness, even testified he did not think *that the wife can hit him that hard to sustain that injury*.[15]

Verily, the findings of the two courts below coincide with the expert testimony of Doctors Bautista and Palma that to produce the injuries found on the victim, the latter must have been hit several times.

Lastly, petitioner would make much of the February 23, 1994 resolution of the prosecutor in I.S. Nos. 93-8538 and 93-8803 which recommended the filing of a complaint against Elsie for the victim's death. This offers no aid to petitioner's cause, since the Secretary of Justice reversed the said resolution of February 23, 1994 and instead found probable cause for the indictment of petitioner and his co-accused in his resolution dated July 3, 1995.[16]

In view of the foregoing, the petitioner miserably failed to advance any compelling reason to disturb the factual findings of the trial court, as affirmed by the CA. We thus go by the

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[14] TSN, September 6, 1996, p. 38.

[15] TSN, October 16, 1997, p. 4.

[16] Records, pp. 22-24.

established principle that, on factual matters, the findings of trial courts, especially when affirmed by the appellate court, must be accorded the greatest respect in the absence, as here, of a showing that they ignored, overlooked, or failed to properly appreciate matters of substance or importance likely to affect the results of the litigation.[17]

WHEREFORE, the instant petition is *DENIED* and the assailed decision and resolution of the CA are *AFFIRMED*.

Costs against the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Azcuna, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 166996. September 3, 2008]

PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV, PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D. ABUYUAN, *petitioners, vs.* **BERNARDIN J. ZAMORA,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; CONSOLIDATION OF CASES; RATIONALE; CASE AT BAR. — [T]he issues of the present petition being intimately intertwined with those presented in

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[17] *De Guia v. Court of Appeals*, G.R. No. 120864, October 8, 2003, 413 SCRA 114, 129; *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 115324, February 19, 2003, 397 SCRA 651, 658-659; *De la Cruz v. Sosing, et al.*, 94 Phil. 26, 29 (1953).

G.R. No. 164267 pending before the Second Division, we are disinclined from resolving this petition alone. That there is identity of parties as well as identity of rights asserted, and that any judgment that may be rendered in one case may amount to *res judicata* in the other, are apparent at the outset; both cases trace their origin to just one set of facts. The pendency of these two cases in two different divisions of this Court and the possibility of conflicting decisions being rendered by either division are factors that will not serve the orderly administration of justice. The issues in G.R. No. 164267 touches upon the propriety of the finding of illegality of Zamora's dismissal; while the present case questions the propriety, *inter alia*, of the order directing payment of separation pay, in lieu of reinstatement, in view of the death of the employee. Eventually, the question whether or not Zamora was lawfully dismissed from service will be revisited. Inasmuch as the correctness of the termination of Zamora's employment is the root of all the issues raised in both petitions, as it has been raised, it would be more practical and convenient to submit all the incidents and their consequences to the *ponente* of G.R. No. 164247. The merging of the two petitions will result in a complete, comprehensive and consistent determination of the related issues, incidents and consequences affecting all the parties thereto. Therefore, the consolidation of the two cases becomes mandatory. The coming together of the issues of both cases would promote their more expeditious and less expensive determination, as well as the orderly administration of justice than if they were to remain in the two branches of the same court. Lest it be forgotten, the rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered. Such an outcome will not serve the orderly administration of justice.

APPEARANCES OF COUNSEL

Bienvenido T. Jamoralin, Jr. for petitioners.
Rico and Associates for respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, which seeks to set aside the 13 August 2004 *Decision*[1] and 1 February 2005 *Amended Decision*[2] of the Court of Appeals in CA-G.R. SP No. 68795 entitled, "*Bernardin J. Zamora v. National Labor Relations Commission, et al.*" In the assailed decisions, the Court of Appeals annulled and set aside the 27 April 2001[3] *Resolution* and 31 October 2001[4] *Decision* of the Third Division of the National Labor Relations Commission (NLRC) in CA No. 013358-97, (a) ordering the Labor Arbiter to forthwith issue a Writ of Execution stating that "(1) complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000";[5] and b) suspending the proceedings of the case in view of the ongoing rehabilitation of Philippine Airlines, Inc. (PAL) and accordingly referring the particular case to the permanent rehabilitation receiver.

This case stemmed from a labor *Complaint*[6] filed by respondent Bernardin J. Zamora (Zamora) against petitioners Philippine Airlines, Incorporated (PAL) and Francisco X. Yngente IV (Yngente), *Assistant Vice-President*, PAL Cargo Sales and Services; Pag-asa C. Ramos (Ramos), *Manager*, PAL Payroll

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[1] Penned by Court of Appeals Associate Justice Eliezer R. de Los Santos with Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion concurring; *rollo*, pp. 78-89.

[2] *Id.* at 92-94.

[3] Penned by NLRC Commissioner Ireneo B. Bernardo with Commissioners Lourdes C. Javier and Tito F. Genilo concurring; *id.* at 168-173.

[4] *Id.* at 174-176.

[5] *Id.* at 173.

[6] CA *rollo*, p. 41.

and Timekeeping Department; Jesus Federico V. Viray (Viray), *Operations Director for International Cargo*, PAL Import Division; Ricardo D. Abuyuan (Abuyuan), *Supervisor for International Cargo*, PAL Import Division; and Gerardo V. Ignacio (Ignacio), *Manager*, PAL Import Operations Division, for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. The complaint was docketed as NLRC NCR Case No. 00-03-01672-96.

From the records of the case, the following have been alleged:

On 9 February 1981, Zamora started his employment at PAL as a Cargo Representative at its International Cargo Operations-Import Operations Division (ICO-IOD). He alleged that sometime in December 1993, Abuyuan, Supervisor of the IOD, instructed him to alter some entries in the Customs Boatnote to conceal smuggling and pilferage activities; and that when he (Zamora) refused to follow said order, Abuyuan filed an administrative case against the former based on false or concocted charges of insubordination and neglect of customers.

On 6 November 1995, Zamora received a Memorandum directing him to report to PAL's Domestic Cargo Operations starting 13 November 1995. Zamora refused to obey the transfer order for the following reasons: (1) that there was no valid and legal reason for his transfer; (2) that the transfer was in violation of the provision of the Collective Bargaining Agreement (CBA) existing at that time between PAL and its employees, which states that no employee shall be transferred without just and proper cause; and (3) that the transfer did not comply with the 15-day prior notice rule likewise embodied in the CBA.

Thereafter, Zamora came into possession of a telex message originating from Honolulu, Hawaii, addressed to Abuyuan with a handwritten notation by Ignacio, Manager, IOD, instructing him to "intercept" a particular cargo. Using the communication as evidence, Zamora wrote PAL management and exposed the supposed illegal activities at the IOD; and requested that an investigation be done to shed light on the matter.

Acting on the exposé, the management of PAL invited Zamora to several conferences to substantiate the serious allegations. Zamora claimed that during the conferences, he was directed to continue reporting to ICO-IOD and observe the activities therein. Starting 15 December 1995, however, his salaries were withheld for no apparent reason.

Quite the opposite, PAL, *et al.*, countered that Zamora's dismissal was for cause anchored on the following facts: that sometime in December 1993, he was administratively charged with Insubordination and Neglect of Customers for his (Zamora) refusal to amend a Customs Boatnote and Inbound Handling Report that was based on an erroneous CPM message; that in October 1995, Zamora had an altercation with Abuyuan, which almost resulted in a fistfight; that he was made to explain his side of the incident but his explanation was considered unsatisfactory; and that Zamora was temporarily transferred to the Domestic Cargo Operations (DCO) in order to diffuse the tension between him and his supervisor, Abuyuan. Zamora, however, refused to heed said order and insisted on reporting to the IOD instead. PAL, *et al.*, also alleged that Zamora similarly ignored the instruction to explain in writing his continued absence from the DCO.

On 22 February 1996, PAL notified Zamora of the administrative charge against him for Absence Without Official Leave (AWOL). Subsequently, he was advised of the termination of his employment due to insubordination, neglect of customer, disrespect for authority and absence without official leave.

On 12 March 1996, Zamora filed a complaint against PAL and Yngente[7] before the NLRC for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. Subsequently, Ramos, Viray, Abuyuan and Ignacio were also made respondents thereto.

On 28 September 1998, the Labor Arbiter[8] rendered a Decision[9] dismissing Zamora's complaint for lack of merit.

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[7] Assistant Vice-President for Cargo Sales and Services of petitioner PAL.

[8] Hon. Voltaire A. Balitaan.

[9] *Rollo*, pp. 97-105.

In dismissing the complaint, the Labor Arbiter considered Zamora's transfer as an exercise of PAL's management prerogative; and that his refusal to report to the DCO was a clear case of insubordination to and disregard of management directive. Zamora expectedly appealed the foregoing decision to the NLRC.

On 26 July 1999, the NLRC (1) reversed[10] the aforequoted decision and ordered Zamora's immediate reinstatement to his former position, but (2) denied the latter's prayer for damages and attorney's fees. The Commission held that PAL, Yngente, Ramos, Viray, Abuyuan and Ignacio (PAL, *et al.*) "failed to substantiate that complainant's (respondent Zamora) transfer was for a just and proper cause."[11]

Zamora filed a *Motion for Partial Reconsideration*[12] of the above-quoted decision, but was denied[13] for lack of merit.

What occurred thereafter was an exchange of a barrage of pleadings.[14]

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[10] *Id.* at 200.

[11] NLRC *Decision* dated 26 July 1999; *id.* at 179-202.

[12] *Id.* at 203-209.

[13] *Id.* at 211-212.

[14] On 1 September 1999, claiming the 26 July 1999 NLRC Decision to have become final and executory, Zamora, through counsel, wrote PAL demanding the execution thereof; on 5 October 1999, PAL, *et al.*, filed a *Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999;* on 18 October 1999, Zamora responded by filing two pleadings before the NLRC: (1) an *Opposition (to Respondents-Appellees' Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999);* and (2) a *Motion for Partial Entry of Judgment* (of the 26 July 1999 NLRC Decision). In the Opposition, Zamora opposed the motion on the ground that the record of the NLRC indicates that a copy of the 26 July 1999 NLRC Decision was sent, via registered mail, to petitioners' counsel on 11 August 1999, although the same remained unclaimed for a time and later on was returned to sender. Zamora averred further that as of 16 August 1999, or five days later, service upon petitioners was deemed completed per the ruling of this Court in *Magno v. Court of Appeals;* in response , PAL, *et al.* filed: (1) an *Opposition (to Complainant's Motion for Partial Entry of Judgment),* as well as (2) a *Motion for*

Meanwhile, on 16 September 1999 and 25 November 1999, the NLRC denied Zamora's partial motion for reconsideration and PAL, *et al.'s* motion for reconsideration of its 26 July 1999 decision, respectively.

Aggrieved, PAL, *et al.*, filed a *Petition for Certiorari*[15] before the Court of Appeals on 11 December 1999. The petition was ***docketed as CA-G.R. SP No. 56428.***[16]

In the interim, Zamora moved anew for the execution of the part of the 26 July 1999 NLRC Decision ordering his reinstatement and payment of monetary benefits.[17] And later, he again filed another pleading, this time before the Labor Arbiter asking that PAL, *et al.*, be held in contempt of the Commission for the airline's refusal to physically reinstate him to his former position, or, at the very least, in the payroll, considering that the order of reinstatement was immediately executory in nature. PAL, *et al.*, opposed the motion.[18]

On 8 January 2001, the Labor Arbiter[19] held that PAL, *et al.*, were guilty of indirect contempt for failing to reinstate Zamora as directed.

PAL, *et al.*, appealed the above-mentioned Order to the NLRC and included therein a prayer for the suspension of

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Reconsideration of the 26 July 1999 NLRC Decision; on 8 November 1999, Zamora filed a *Reply* to PAL, *et al.'s Opposition*; on 18 November 1999, Zamora filed another pleading, this time in response to the *Motion for Reconsideration*, moving to have the motion expunged from the record of the case on the argument that the 26 July 1999 NLRC Decision had long become final and executory; refusing to be bested, PAL, *et al*. filed a *Comment* on Zamora's 18 November 1999 *Opposition To And Motion To Expunge*.

[15] CA *rollo,* pp. 117-143.

[16] On 8 January 2001, the Court of Appeals dismissed the petition; it is now before the Second Division of this Court for review, docketed as G.R. No. 164267.

[17] CA *rollo,* pp. 144-149.

[18] *Id.* at 157-160.

[19] Hon. Joselito Cruz Villarosa.

the proceedings since the airline, at that time, was undergoing rehabilitation.[20]

In a Resolution[21] dated 27 April 2001, the NLRC (1) partially *reversed* the 8 January 2001 Labor Arbiter Order by setting aside the finding of indirect contempt; but affirmed the portion which ordered the issuance of the writ of execution. More importantly, it partially *amended* its 26 July 1999 Decision by ordering the payment of separation pay in lieu of reinstatement.

Both parties moved for the partial reconsideration thereof.

On 31 October 2001, the NLRC denied Zamora's motion for partial reconsideration but granted that of PAL by suspending the proceedings of the case in view of the airline's ongoing rehabilitation.

On 28 January 2002, the parties went up again to the Court of Appeals but this time upon Zamora's initiative. The case was ***docketed as CA-G.R. SP No. 68795***. Zamora assailed the 27 April 2001 and 31 October 2001 Resolution and Decision, respectively, of the NLRC.

In the intervening time, in CA-G.R. SP No. 56428, the Court of Appeals affirmed the 26 July 1999 NLRC Decision. Said case was then elevated to this Court's Second Division, docketed as G.R. No. 164267, and is currently still pending resolution.

On 13 August 2004, the appellate court promulgated its Decision in the later petition (CA-G.R. SP No. 68795) granting Zamora's petition. It annulled and set aside the 27 April 2001 Resolution and 31 October 2001 Decision of the NLRC, and, accordingly, affirmed the 26 July 1999 NLRC Decision. However, on 1 February 2005, it amended its earlier decision by deleting the order of reinstatement and, in lieu thereof, the payment of

[20] Per the Securities and Exchange Commission's (SEC's) 16 August 1999 Order, the SEC directed the appointment of a permanent rehabilitation receiver for PAL. Said rehabilitation case was docketed as SEC Case No. 06-98-6004, entitled "*In the Matter of the Petition for the Approval of Rehabilitation Plan and for Appointment of a Rehabilitation Receiver.*"

[21] *Rollo,* pp. 168-173.

separation pay was directed. It also held that the monetary claims of Zamora be presented to the PAL Rehabilitation Receiver subject to the rules on preference of credit. In modifying its earlier decision, it took into account Zamora's subsequent imprisonment after being convicted of the crime of murder.

While the case was pending, the heirs of Zamora manifested to the appellate court that on 9 January 2005, Zamora died of cardio-pulmonary arrest at the Ospital ng Maynila.[22]

Dissatisfied, PAL, *et al.*, filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended.[23]

On 6 February 2007, this Court resolved[24] to suspend the proceedings of the instant petition in view of the ongoing rehabilitation of PAL. However, on 28 September 2007, PAL successfully exited rehabilitation by virtue of the Securities and Exchange Commission finding of the airline's "firm commitment to settle its outstanding obligations as well as the fact that its operations and its financial condition have been normalized and stabilized in conformity with the Amended and Restated Rehabilitation Plan x x x."[25]

Considering the above, there is no more legal impediment for this Court to settle the instant petition.

Be that as it may, the issues of the present petition being intimately intertwined with those presented in G.R. No. 164267 pending before the Second Division, we are disinclined from resolving this petition alone. That there is identity of parties as well as identity of rights asserted, and that any judgment that may be rendered in one case may amount to *res judicata* in the other, are apparent at the outset; both cases trace their origin to just one set of facts. The pendency of these two cases in two different divisions of this Court and the possibility of

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[22] Manifestation and Motion, CA *rollo*, pp. 574-575.

[23] Petition for Review on *Certiorari*, p. 9; *rollo*, p. 58.

[24] *Rollo*, pp. 860-881.

[25] SEC Order dated 28 September 2007 in SEC Case No. 06-986004; *rollo*, pp. 903-908.

conflicting decisions being rendered by either division are factors that will not serve the orderly administration of justice.

The issues in G.R. No. 164267 touches upon the propriety of the finding of illegality of Zamora's dismissal; while the present case questions the propriety, *inter alia,* of the order directing payment of separation pay, in lieu of reinstatement, in view of the death of the employee. Eventually, the question whether or not Zamora was lawfully dismissed from service will be revisited. Inasmuch as the correctness of the termination of Zamora's employment is the root of all the issues raised in both petitions, as it has been raised, it would be more practical and convenient to submit all the incidents and their consequences to the *ponente* of G.R. No. 164247. The merging of the two petitions will result in a complete, comprehensive and consistent determination of the related issues, incidents and consequences affecting all the parties thereto. Therefore, the consolidation of the two cases becomes mandatory. The coming together of the issues of both cases would promote their more expeditious and less expensive determination, as well as the orderly administration of justice than if they were to remain in the two branches of the same court.

Lest it be forgotten, the rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered. Such an outcome will not serve the orderly administration of justice.[26]

WHEREFORE, premises considered, the present petition for review on *certiorari,* G.R. No. 166996, is hereby ordered consolidated with G.R. No. 164267. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio, Austria-Martinez, and *Velasco, Jr., JJ.,* concur.

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[26] *Benguet Corp., Inc. v. Court of Appeals,* G.R. No. 80902, 31 August 1988, 165 SCRA 265, 271.

FIRST DIVISION

[G.R. No. 167671. September 3, 2008]

RICARDO S. SANTOS, JR.,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,**[2] *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LEFT PRIMARILY TO THE JUDGMENT OF THE TRIAL JUDGE. — The credibility of a witness is left primarily to the judgment of the trial judge. He is in a vantage position to assess the witness' demeanor, conduct and attitude under grueling examination because he has the direct opportunity to observe the witness on the stand. The factual findings of the appellate court are also given great weight especially if in complete accord with the findings of the lower court.

2. CRIMINAL LAW; FALSIFICATION OF DOCUMENTS UNDER PARAGRAPH 1, ARTICLE 172 OF THE REVISED PENAL CODE; ELEMENTS. — Falsification of documents under paragraph 1 of Article 172 refers to falsification by a private individual or a public officer or employee who did not take advantage of his official position, of public, private or commercial documents. Its elements are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171; and (3) that the falsification was committed in a public, official or commercial document.

3. ID.; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL BY INDUCEMENT; INDUCEMENT, HOW EFFECTED. — The power of supervision or control over another does not preclude inducement. A person may be induced to commit a crime in two ways: (1) by giving a price or offering a reward or promise and (2) by using words of command.

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[1] In the CFI decision, he was referred to as Ricardo Santos.

[2] The Court of Appeals was originally impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CORONA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Ricardo S. Santos, Jr. assails the July 26, 2004 decision[3] and April 7, 2005 resolution[4] of the Court of Appeals (CA).

On October 8, 1969, four separate informations for malversation of public funds thru falsification of public documents were filed in the Court of First Instance[5] of Rizal (CFI), Branch V, Quezon City against petitioner and nine others.[6] These cases were docketed as Criminal Case Nos. Q-9783, Q-9784, Q-9787 and Q-9788.[7] After trial, the CFI found petitioner and his co-accused Pedro Velasco[8] guilty beyond reasonable

[3] Penned by Associate Justice Perlita J. Tria-Tirona and concurred by Associate Justices Ruben T. Reyes (now Associate Justice of the Supreme Court) and Jose C. Reyes, Jr. of the Sixth Division of the Court of Appeals. *Rollo,* pp. 56-75.

[4] *Id.,* p. 88.

[5] Now Regional Trial Court.

[6] The co-accused were: Vedasto Martinez, Delfin Mamboyoc, Isagani Sabiniano, Ramon Alam, Benjamin Nabong, Pedro Velasco, Henry Cruz, Crisanta Santos and Corazon Nepomuceno. The CFI dismissed the case against Benjamin Nabong, Crisanta Santos and Corazon Nepomuceno on a demurrer to evidence. Henry Cruz became a state witness. The CFI acquitted after trial Ramon Alam. *Rollo,* pp. 13-14, 16.

[7] Q-9783 pertained to the travel expense voucher of Rene Planas. Q-9784 pertained to three travel expense vouchers of Constante Siagan. Q-9787 pertained to two travel expense vouchers of Henry Cruz. Q-9788 pertained to three travel expense vouchers of David dela Pena. *Id.,* pp. 59-60.

[8] Vedasto Martinez, Delfin Mamboyoc and Isagani Sabiniano were found guilty beyond reasonable doubt as principals in the crime of malversation under Article 217 of the Revised Penal Code. Decision of the CFI dated December 11, 1979. *Id.,* p. 53

doubt as principals of the complex crime of malversation thru falsification of public documents under Articles 217 and 171 of the Revised Penal Code (RPC).[9] All of the accused who were convicted appealed the consolidated decision[10] of the CFI to the CA. However, all of them except petitioner died during the pendency of the appeal. In the dispositive portion of its assailed decision, the CA held:

> WHEREFORE, the instant appeal is **PARTIALLY GRANTED**. The assailed decision of the then Court of First Instance of Rizal, Branch V, Quezon City, in Criminal Case[s] Nos. Q-9783, Q-9784, Q-9787 and Q-9788, is hereby **MODIFIED**, in that the accused-appellant Ricardo S. Santos, Jr. is **ACQUITTED** in Criminal Case[s] Nos. Q-9783, Q-9784 and Q-9788, but is held guilty beyond reasonable doubt of the crime of FALSIFICATION OF PUBLIC DOCUMENT, as defined and penalized under Article 172, paragraph 1, of the Revised Penal Code, in relation to Article 171, paragraph 2, of the same code xxx[11]

The CA held that petitioner was a principal by inducement,[12] based on the testimony of state witness Henry Cruz[13] that petitioner induced him to sign the travel expense voucher (Exhibit AA-1), subject of Criminal Case No. Q-9787 in exchange for receiving a share of the proceeds of the claim even if he was not entitled thereto.

Petitioner finds it incredulous that the CA believed the testimony of Cruz with respect to "Exhibit AA-1" but not Cruz's

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[9] *Id.*

[10] *Id.*, pp. 34-54.

[11] *Id.*, p. 74.

[12] "[T]he prosecution was able to prove beyond reasonable doubt the guilt of the accused-appellant, as principal by inducement, of the crime of falsification of public document as defined and penalized under Article 172, paragraph 1, in relation to Article 171, paragraph 2, of the Revised Penal Code, for the falsification of travel expense voucher xxx in Criminal Case No. Q-9787." *Id.*, p. 73.

[13] Henry Cruz was one of the accused in Criminal Case No. Q-9787. In fact, the travel expense voucher allegedly falsified was in his name. He was later on discharged as a state witness.

testimony with respect to "Exhibits G, H, I, W, X, X1 and X2."[14] Hence, petitioner argues that the CA erred in finding him guilty, as a principal by inducement, of falsification of a public document.

We disagree.

The credibility of a witness is left primarily to the judgment of the trial judge. He is in a vantage position to assess the witness' demeanor, conduct and attitude under grueling examination because he has the direct opportunity to observe the witness on the stand.[15] The factual findings of the appellate court are also given great weight especially if in complete accord with the findings of the lower court.[16] In holding that the evaluation of the testimonies of witnesses must be left to the trial court as the agency is in the best position to observe the witnesses' demeanor on the witness stand,[17] the CA merely applied a well-settled rule. We find no reason to rule otherwise.

The CA acquitted petitioner in Criminal Case Nos. Q-9783, Q-9784 and Q-9788 after it found:

> [That] the testimonies of both prosecution witnesses, Henry Cruz and Tolentino C. Mendoza [did] not establish with moral certainty the culpability of the accused-appellant for the falsification of the subject travel expense vouchers.[18]

This pronouncement did not state that Cruz lied. The CA merely stated that Cruz's testimony was insufficient or inadequate to sustain petitioner's conviction for falsification in Criminal Case Nos. Q-9783, Q-9784 and Q-9788. In Criminal Case No. Q-9787 however, the CA found Cruz's testimony in relation to "Exhibit AA-1" sufficient to prove that petitioner committed

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[14] Treasury warrants which were issued pursuant to travel expense vouchers subjects of Criminal Case Nos. Q-9783, Q-9784 and Q-9788. *Rollo*, p. 72.

[15] See *People v. Major Comiling*, G.R. No. 140405, 4 March 2004, 424 SCRA 698, 720.

[16] *Lantin v. CA*, G.R. No. 127141, 30 April 2003, 402 SCRA 202, 207.

[17] *Rollo*, p. 73.

[18] *Id.*, p. 72.

the crime of falsification of public documents under paragraph 1, Article 172 in relation to paragraph 2, Article 171 of the RPC.

Falsification of documents under paragraph 1 of Article 172 refers to falsification by a private individual or a public officer or employee who did not take advantage of his official position, of public, private or commercial documents. Its elements are:

(1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position;

(2) that he committed any of the acts of falsification enumerated in Article 171; and

(3) that the falsification was committed in a public, official or commercial document.[19]

Petitioner was a disbursing officer of the Bureau of Lands.[20] He was a public official. While the CFI did not state in its decision that petitioner took advantage of his position in the government in committing the crime, the CA made a more definite pronouncement to this effect.[21] Petitioner's functions as disbursing officer did not include the duty to make, prepare or otherwise intervene in the preparation of the falsified travel expense voucher. His function was only to pay payees of treasury warrants and other cash vouchers or payrolls.[22] Nonetheless, he took the liberty of intervening in the preparation of the travel expense voucher in question. The first element for the crime under paragraph 1 of Article 172 of the RPC was present.

The second element was likewise there. Petitioner allegedly committed the crime by "causing it to appear that persons

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[19] Reyes, Luis B., *THE REVISED PENAL CODE*, Book Two, Fifteenth Edition (2001), Rex Book Store, Inc., p. 219.

[20] *Rollo*, p. 49.

[21] *Id.*, p. 73.

[22] *Id.*, p. 223.

participated in an act or a proceeding when they did not in fact so participate."[23] Its requisites are:

(1) that the offender caused it to appear in a document that a person or persons participated in an act or proceedings; and

(2) that such person or persons did not in fact so participate in the act or proceeding.[24]

Both the CFI and the CA found that petitioner asked Cruz to sign the falsified voucher on the promise of a share of the proceeds, even if Cruz was not entitled it.

Petitioner claims that he could not have induced Cruz to falsify the travel expense voucher because he did not have the power of supervision or control over Cruz. We disagree. The power of supervision or control over another does not preclude inducement. A person may be induced to commit a crime in two ways: (1) by giving a price or offering a reward or promise and (2) by using words of command.[25] In this case, petitioner was found by both the CFI and the CA to have offered Cruz a share of the proceeds in exchange for his act of falsification. That promise was the inducement for the falsification.

Finally, the parties never disputed the finding that the travel voucher was a public document. We see no reason to depart from the findings of the CFI and CA.

WHEREFORE, the petition is hereby *DENIED*. The July 26, 2004 decision and April 7, 2005 resolution of the Court of Appeals are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[23] REVISED PENAL CODE, Book Two, Title Four, Art. 171, par. 2.

[24] Reyes, Luis B., *THE REVISED PENAL CODE*, Book Two, Fifteenth Edition (2001), Rex Book Store, Inc., p. 207.

[25] *People v. Yanson-Dumancas*, 378 Phil. 341, 351 (1999).

FIRST DIVISION

[G.R. No. 168742. September 3, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NORMA ROYALES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION PROCESSES; CADASTRAL PROCEEDINGS; EXPLAINED.** — Under the cadastral system, the government initiates the proceedings for the compulsory registration of lands within a stated area by filing a petition in court against the holder, claimants, possessors or occupants of such lands. All claimants are compelled to act and present their answers otherwise they lose their right to own their property. The purpose is to serve public interest by requiring that the titles to the lands "be settled and adjudicated." Notice of the filing of the petition is published in the Official Gazette. During the trial, conflicting claims are presented and the court adjudicates ownership in favor of one of the claimants. When the decision becomes final, the court orders the issuance of the decree of registration which, in turn, becomes the basis for the issuance of a certificate of title.

2. **ID.; ID.; ID.; ORDINARY LAND REGISTRATION PROCEEDINGS AND CADASTRAL PROCEEDINGS; NATURE.** — Ordinary land registration proceedings and cadastral proceedings both aim to bring lands under the operation of the Torrens system. The cadastral system was conceived to hasten the registration of lands and therefore make it more effective. However, these two kinds of proceedings also vary in a number of ways and the legislature chose to treat them differently in Act 3110.

3. **ID.; ID.; ACT 3110, SECTION 29; CONSTRUED.** — Section 29 of Act 3110: SEC. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may **file their respective actions anew** without being entitled to claim the

benefits of Section thirty-one hereof. In construing this provision in *Realty Sales Enterprises, Inc. v. Intermediate Appellate Court*, we held that: The whole theory of reconstitution is to reproduce or replace records lost or destroyed so that said records may be complete and court proceedings may continue from the point or stage where said proceedings stopped due to the loss of the records. The law contemplates different stages for purposes of reconstitution. x x x If the records up to a certain point or stage are lost and they are not reconstituted, the parties and the court should go back to the next preceding stage where records are available, but not beyond that; otherwise to ignore and go beyond the stage next preceding would be voiding and unnecessarily ignoring proceedings which are duly recorded and documented, to the great prejudice not only of the parties and their witnesses, but also of the court which must again perforce admit pleadings, rule upon them and then try the case and decide it anew, — all of these, when the records up to said point or stage are intact and complete, and uncontroverted. x x x [To] require the parties to file their action anew and incur the expenses and [suffer] the annoyance and vexation incident to the filing of pleadings and the conduct of hearings, aside from the possibility that some of the witnesses may have died or left the jurisdiction, and also to require the court to again rule on the pleadings and hear the witnesses and then decide the case, when all along and all the time the record of the former pleadings of the trial and evidence and decision are there and are not disputed, all this should appear to be not exactly logical or reasonable, or fair and just to the parties, including the trial court which has not committed any negligence or fault at all. The ruling in *Nacua* is more in keeping with the spirit and intention of the reconstitution law. As stated therein, **"Act 3110 was not promulgated to penalize people for failure to observe or invoke its provisions. It contains no penal sanction. It was enacted rather to aid and benefit litigants, so that when court records are destroyed at any stage of judicial proceedings, instead of instituting a new case and starting all over again, they may reconstitute the records lost and continue the case. If they fail to ask for reconstitution, the worst that can happen to them is that they lose the advantages provided by the reconstitution law" (*e.g.* having the case at the stage when the records were destroyed).** x x x The records were destroyed at that stage of the case when all that remained to

be done was the ministerial duty of the Land Registration Office to issue a decree of registration (which would be the basis for the issuance of an Original Certificate of Title) to implement a judgment which had become final. There are however authentic copies of the decisions of the CFI and the Court of Appeals adjudicating Lots 1, 2 and 3 of Plan Psu-47035 to Estanislao Mayuga. Moreover, there is an official report of the decision of this Court affirming both the CFI and the CA decisions. A final order of adjudication forms the basis for the issuance of a decree of registration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the April 29, 2005 decision[2] and June 28, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 79706.

On July 7, 1970, the Director of Lands filed cadastral case no. L-1[4] in the then Court of First Instance (CFI) of Camarines Sur, Branch 5 involving lot nos. 2917, 2919, 3272 and 9533 located in Libmanan, Camarines Sur.[5] He prayed that these

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo of the Seventeenth Division of the Court of Appeals; *rollo*, pp. 43-50.

[3] *Id.*, pp. 52-53.

[4] LRC Record No. 598; *id.*, p. 28. This is pursuant to Sec. 5, Act No. 2259 (otherwise known as the Cadastral Act enacted on February 11, 1913), as amended by Sec. 1855, Act No. 2711; *id.*, p. 44.

[5] The respective areas of the lots are 16,713.64 sq. m. (lot no. 2917), 9,158.19 sq. m. (lot no. 2919), 11,773.48 sq. m. (lot no. 3272) and 668.30 sq. m. (lot no. 9533); *id.*, pp. 27-28.

parcels of land be declared public land.[6] Respondent Norma Royales was a claimant of these lots. Notice was published in the Official Gazette.[7]

On September 17, 1975, the CFI rendered a decision ordering the registration of the lots in the name of respondent.[8] However, before the certificate of finality of the decision and order for the issuance of the decree of registration could be issued by the court, the Registry of Deeds of Camarines Sur was razed by fire on June 26, 1976 and all the titles and documents therein were burned.[9]

On October 24, 2002 or 27 years later, respondent filed a petition for the reconstitution of the September 17, 1975 CFI decision in the Regional Trial Court (RTC) of Libmanan, Camarines Sur, Branch 57, docketed as Spec. Proc. No. 846. On November 6, 2002, the RTC issued an order setting the petition for hearing without directing the respondent to cause the publication of said order in the Official Gazette. It, however, notified the government prosecutor and Land Registration Authority (LRA). It likewise directed that the order be posted.[10] No opposition was filed.[11]

On November 25, 2002, the RTC rendered a decision granting the petition and ordered the reconstitution of the September 17, 1975 decision considering that the LRA had on file a duplicate original of the decision and other related records of the case.[12]

Aggrieved, petitioner Republic of the Philippines filed an appeal in the CA docketed as CA-G.R. CV No. 79706. In a decision

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[6] *Id.*, p. 65.

[7] On August 27 and September 3, 1973, vol. 69, nos. 35 and 36; *id.*, pp. 44 and 65.

[8] Penned by Judge Abelardo M. Dayrit; *id.*

[9] *Id.*, pp. 28 and 44.

[10] *Id.*, pp. 29-30.

[11] *Id.*, p. 68.

[12] *Id.*, pp. 67-69.

dated April 29, 2005, the CA affirmed the RTC decision. It denied reconsideration in a resolution dated June 28, 2005. It held that publication was no longer required because the CFI, through the Land Registration Commission (predecessor of the LRA), had already caused the publication of the order in the Official Gazette.[13]

Hence, this petition raising the lone issue of whether or not publication was necessary for the court to acquire jurisdiction over a petition for reconstitution of a final and executory decision in a cadastral case.

Petitioner argues that under Section 10 of Act 3110,[14] publication in the Official Gazette is necessary in a petition for reconstitution of records of pending cadastral cases. On the other hand, respondent asserts that Section 9 of the same law is the applicable provision. These sections state:

PENDING REGISTRATION PROCEEDINGS

SEC. 9. **Registration proceedings pending the issuance of decree** shall be **reconstituted by means of copies furnished by the Chief of the General Land Registration Office**. It shall be the duty of this officer, immediately upon receipt of the notice provided for in section one of this Act, to direct duly certified true copies of all destroyed registration proceedings pending at the time of the destruction and all decrees destroyed, to be sent to the clerk of Court of First Instance concerned.

PENDING CADASTRAL CASES

SEC. 10. Pending **cadastral case** shall be reconstituted as follows:

The Court shall issue an order directing the person interested to file anew their replies, for which purpose reasonable time may be allowed. **The order shall be published in the Official Gazette** and by local notices during a period fixed in said order.

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[13] *Id.*, p. 67.

[14] Entitled "An Act to provide an adequate procedure for the reconstitution of the records of pending judicial proceedings and books, documents, and files of the office of the register of deeds, destroyed by fire or other public calamities, and for other purposes."

Immediately upon receipt of the notice provided for in section one of this Act, the Chief of the General Land Registration Office shall cause duly certified true copies of all destroyed cadastral proceedings to be sent to the clerk of the Court concerned.

The new replies filed by the parties interested and the copies furnished by the General Land Registration Office shall form the reconstituted record. (Emphasis supplied)

Petitioner insists that Section 9 is concerned with registration proceedings but Section 10 is specifically applicable to cadastral proceedings.[15] Respondent counters that Section 9 is the relevant provision because it pertains to a situation where a decision has already been rendered by the court but no decree of registration has yet been issued.[16]

The petition is impressed with merit.

In this case, the CFI's decision in favor of respondent was promulgated on September 17, 1975. This was already final when the records of the case were burned on June 26, 1976.[17] However, the decree of registration had not yet been issued so the proceedings remained pending.[18] Hence, there was a need to reconstitute the records so that the case could continue. The question is what provision of Act 3110 should apply: Section 9 or Section 10?

As their respective headings state, Section 9 of Act 3110 refers to the reconstitution of a pending land registration proceeding while Section 10 applies to the reconstitution of a pending cadastral action, a distinct kind of land registration process. The case here involves a cadastral undertaking.

Under the cadastral system, the government initiates the proceedings for the compulsory registration of lands within a stated area by filing a petition in court against the holder,

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[15] *Rollo*, p. 114.

[16] *Id.*, p. 124.

[17] Petitioner did not dispute this.

[18] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court*, G.R. No. 67451, 4 May 1988, 161 SCRA 56, 58.

claimants, possessors or occupants of such lands.[19] All claimants are compelled to act and present their answers otherwise they lose their right to own their property.[20] The purpose is to serve public interest by requiring that the titles to the lands "be settled and adjudicated."[21] Notice of the filing of the petition is published in the Official Gazette.[22] During the trial, conflicting claims are presented and the court adjudicates ownership in favor of one of the claimants.[23] When the decision becomes final, the court orders the issuance of the decree of registration which, in turn, becomes the basis for the issuance of a certificate of title.[24]

Ordinary land registration proceedings[25] and cadastral proceedings both aim to bring lands under the operation of the Torrens system.[26] The cadastral system was conceived to hasten the registration of lands and therefore make it more effective.[27] However, these two kinds of proceedings also vary in a number of ways[28] and the legislature chose to treat them differently in Act 3110. Its intent to differentiate the two reconstitution procedures should be given effect. It was presumed to know the meaning of the words it employed and to have used them advisedly.[29]

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[19] *Llenares v. CA*, G.R. No. 98709, 13 May 1993, 222 SCRA 10, 22, citations omitted.

[20] *Tamin v. CA*, G.R. No. 97477, 8 May 1992, 208 SCRA 863, 872.

[21] Act No. 2259, Sec. 1.

[22] *Government v. Abural*, 39 Phil. 996, 1001 (1919).

[23] *Id.*, citing Sec. 11, Act No. 2259.

[24] *Id.*, p. 1002.

[25] Under Act No. 496 (or the Land Registration Act).

[26] Peña, Narciso, Peña Jr. and Peña, Nestor, *REGISTRATION OF LAND TITLES AND DEEDS*, 1994 revised ed., p. 487.

[27] *Id.*, p. 494.

[28] For example, as to the party initiating, subject matter, ownership, survey and risk. See discussion of Peña; *id.*

[29] *Marsaman Manning Agency, Inc. v. NLRC*, G.R. No. 127195, 25 August 1999, 313 SCRA 88, 102, citing *JMM Promotion & Management, Inc. v. NLRC*, G.R. No. 109835, 22 November 1993, 228 SCRA 129, 134 and *Aparri v. CA*, G.R. No. L-30057, 31 January 1984, 127 SCRA 231, 241.

Accordingly, we hold that it is Section 10 which is applicable to this cadastral proceeding. Consequently, the RTC did not acquire jurisdiction over respondent's petition for reconstitution for failing to comply with the publication requirement.

We, however, do not subscribe to petitioner's submission that the cadastral case should be filed anew (that is, from the very beginning), in accordance with Section 29 of Act 3110:

> SEC. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may **file their respective actions anew** without being entitled to claim the benefits of section thirty-one hereof. (Emphasis supplied)

In construing this provision in *Realty Sales Enterprises, Inc. v. Intermediate Appellate Court*,[30] we held that:

> The whole theory of reconstitution is to reproduce or replace records lost or destroyed so that said records may be complete and court proceedings may continue from the point or stage where said proceedings stopped due to the loss of the records. The law contemplates different stages for purposes of reconstitution.
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> x x x x x x x x x
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> If the records up to a certain point or stage are lost and they are not reconstituted, the parties and the court should go back to the next preceding stage where records are available, but not beyond that; otherwise to ignore and go beyond the stage next preceding would be voiding and unnecessarily ignoring proceedings which are duly recorded and documented, to the great prejudice not only of the parties and their witnesses, but also of the court which must again perforce admit pleadings, rule upon them and then try the case and decide it anew, — all of these, when the records up to said point or stage are intact and complete, and uncontroverted.
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> x x x x x x x x x
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> . . . [To] require the parties to file their action anew and incur the expenses and [suffer] the annoyance and vexation incident to the

[30] G.R. No. 67451, 28 September 1987, 154 SCRA 328.

filing of pleadings and the conduct of hearings, aside from the possibility that some of the witnesses may have died or left the jurisdiction, and also to require the court to again rule on the pleadings and hear the witnesses and then decide the case, when all along and all the time the record of the former pleadings of the trial and evidence and decision are there and are not disputed, all this should appear to be not exactly logical or reasonable, or fair and just to the parties, including the trial court which has not committed any negligence or fault at all.

The ruling in *Nacua* is more in keeping with the spirit and intention of the reconstitution law. As stated therein, **"Act 3110 was not promulgated to penalize people for failure to observe or invoke its provisions. It contains no penal sanction. It was enacted rather to aid and benefit litigants, so that when court records are destroyed at any stage of judicial proceedings, instead of instituting a new case and starting all over again, they may reconstitute the records lost and continue the case. If they fail to ask for reconstitution, the worst that can happen to them is that they lose the advantages provided by the reconstitution law" (*e.g.* having the case at the stage when the records were destroyed).**

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The records were destroyed at that stage of the case when all that remained to be done was the ministerial duty of the Land Registration Office to issue a decree of registration (which would be the basis for the issuance of an Original Certificate of Title) to implement a judgment which had become final. There are however authentic copies of the decisions of the CFI and the Court of Appeals adjudicating Lots 1, 2 and 3 of Plan Psu-47035 to Estanislao Mayuga. Moreover, there is an official report of the decision of this Court affirming both the CFI and the CA decisions. A final order of adjudication forms the basis for the issuance of a decree of registration.[31] (Emphasis supplied)

In line with this ruling, we shall not penalize respondent by requiring that the cadastral case be relitigated. Respondent's

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[31] *Id.*, pp. 342-344, citing *Nacua v. Beltran*, 93 Phil. 595, 600-602 (1953), other citations omitted. We chose to adhere to the doctrine enunciated here rather than the strict interpretation of the Court in *Villegas, et al. v. Fernando, et al.* (137 Phil. 775, 784-785 [1969]).

remedy is to file the petition for reconstitution anew and observe the requirements under Section 10 of Act 3110. Considering that there is already a final decision in her favor, the case can continue and the court, if proper, may order the issuance of a decree of registration.[32]

WHEREFORE, the petition is hereby *GRANTED*. The April 29, 2005 decision and June 28, 2005 resolution of the Court of Appeals in CA-G.R. CV No. 79706 are *REVERSED* and *SET ASIDE* accordingly and Spec. Proc. No. 846 is hereby ordered *DISMISSED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 168787. September 3, 2008]

DEPARTMENT OF AGRARIAN REFORM, represented by Provincial Agrarian Reform Officer STEPHEN M. LEONIDAS, *petitioner, vs.* **POLO COCONUT PLANTATION CO., INC., FLORENCIA D. REMOLLO, NOLI C. ALCANTARA,[1] ZOSIMO BARBA, ROBERT B. BAJANA, EMETERIO V. TAG-AT, JUVENAL T. MENDEZ,[2] SHIELA R. REYES, JONITA M. CADALLO, PRISCO P. BACO, BENJAMIN C. DAYAP, ANTONIO DEDELES,[3]**

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32 *Supra* note 22.

1 Also referred to as "Nole C. Alcantara" in some parts of the records.

2 Also referred to as "Jovenal T. Mendez" in some parts of the records.

3 Also referred to as "Anotonio Dedeles" in some parts of the records.

NARCISO D. DIAZ, JOVENIANO REYES,[4] **RODOLFO C. SALVA, AVELINO C. BAJANA, PRAXEDES BAJANA, ALEJANDRO T. GIMOL, EMELINA B. SEDIGO**[5] **and HERMINIGILDO VILLAFLORES,** *respondents.*

[G.R. No. 169271. September 3, 2008]

MARTINA Q. ABARCA, TOLENTINA E. ABLAY, CONCHITA M. AC-AC, JOSEPHINA S. AC-AC, LORETA C. AC-AC, CARIDAD Q. AGUILAR, DIOSDADO A. AGUILAR, ROMULO S. AGUILAR, SHERLITA T. AGUILAR, WILFREDO T. ALCANTARA, ANACLETO B. ALFORQUE, RICARDO P. BACO, RODRIGO P. BACO, SR., DARIO B. BAJANA, SR., DEMETRIO F. BALBUENA, GREGORIA R. BARBA, TOMAS T. BARBA, WILFREDO R. BARBA, VIVIAN F. BAROT, DOMINGO O. BAROY, ARTURO A. BORROMEO, FEDENCIA R. BORROMEO, JUANITA P. CABIL, SALVADOR A. CABORNAY, SEVERINO M. CABUG-OS, AUREA M. CALDA, BALTAZAR R. CATALOÑA, DANILO B. CURATO, ARNULFO B. DAEL, DEMOCRITO B. DAGODOG, GENARO C. DURAN, JOSEPHINE M. ELLEMA, ALBINA R. ELMAGA, ENRIQUE R. ELMAGA, EDWIN L. ELUMIR, TOMAS M. GABIHAN, ALBERTO A. GASO, PEDRO R. GASO, VISITACION S. GASO, ERLINDA S. GAZO, ANDRES M. GENEL, DIOSCOR M. GENEL, ANGEL R. GOMEZ, LORENZO S. GOMEZ, SANTIAGO T. GOMEZ, SILANDO Q. GOMEZ, CONSORCIA G. GUEVARRA, FREDESWINDA M. GUMA, CELODONIA A. GUZMAN, HERCULANO B. GUZMAN, JR., CESAR Q. HAROY, SR., EDDIE

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[4] Also referred to as "Jovenciano Reyes" in some parts of the records.

[5] Also referred to as "Melina B. Sedigo" in some parts of the records.

Q. HAROY, ROMEO E. INOFERIO, GENARA R. JUANO, GEVINO B. JUANO, SR., ROGELIA B. JUANO, ROSALITA G. JUANO, DIOGRACIAS R. LARAZAN, RELINA H. LARENA, JOSE G. MAGALSO, INOCENCIA G. MALCO, LUCENA B. MALTO, SANTOS S. MALTAO, ELINA T. MARIMAT, RAMON C. MARIMAT, MERCY B. MARO, RUTHELMA D. MARO, CHARITA S. MATEO, ALMA D. MEDINA, ABUNDIO M. MENDEZ, RENOLD S. MINDEZ, ALBERTO B. MIRA, GAUDENCIA S. MIRA, CRESTITA D. MONTAÑA, DIONISIA T. MONTAÑA, LORETO R. NAPAO, ALICIA P. NILLAS, ESPERANZA M. OMATANG, JR., FELICISIMA M. ORACION, JOEL M. ORACION, PATROCINIO T. PAO, LOURDES T. PARTOSA, FABIAN S. PIÑERO, FELIX R. PUBLICO, MARIBELLE B. PUBLICO, CARMELITA M. QUILARIO, ENRIQUE R. QUILARIO, MANOLITA M. QUILARIO, MIGUEL S. QUILARIO, LEONILA J. QUINQUILLERIA, DELTA M. RAMIREZ, ELIAS O. RAMOS, CONSOLACION T. REAL, ERLINDA I. REGALA, DOMINGA M. REMAN, EUGENIO O. REMAN, PEPITA R. REMAN, RODNEY D. REMAN, RONNIE O. REMAN, SR., DOMINADOR P. REMPOJO, EUTIQUIO T. REMPOJO, ROSITA C. REMPOJO, CAROLINA T. REYES, DIONISIA M. REYES, EUGENIA B. REYES, LORETA D. REYES, MARIO S. REYES, LAUREANO C. RIVERA, PETER C. RIVERA, EVANGELINE Q. RODRIGUEZ, RICARDO R. RODRIGUEZ, PATROCINIO I. SABIHON, FELIPE G. SAGA, ANESIA D. SALIN, FLAVIANO T. SALIN, JR., WENEFREDO T. SALIN, VIRGILIO B. SALOMA, ESTELA S. SALVA, GEORGE R. SALVA, TEOFISTA R. SALVA, JOSEPHINE T. SEDIGO, MICHAEL P. SEGISMAR, SR., JOSEPH S. SEVILLA, MARISSA H. SIENES, MA. GINA M. SILVA, ARTURO T. SOLITANA, MARILYN M.

TABORA, GABINO G. TEMBLOR, REYNALDO Q. TEMBLOR, ELSA A. TEVES, LEONORA D. TORCO, GREGORIA O. TOROY, ANDRES P. TORRES, HILARIO P. TORRES, LEONARDO G. TORRES, MANOLITA T. TORRES, GENEROSO I. TORRES, LEONARDO F. TUBAGA, AGRIPINO P. TURCO, FLORDELICO S. VERBO, OLYMPIA T. YORONG and ROSENDA C. ZERNA, *petitioners, vs.* **POLO COCONUT PLANTATION CO., INC., FLORENCIA D. REMOLLO, NOLE C. ALCANTARA, ZOSIMO BARBA, ROBERT B. BAJANA,**[6] **EMETERIO V. TAG-AT, JUVENAL T. MENDEZ, SHIELA R. REYES, JONITA M. CADALLO, PRISCO P. BACO, BENJAMIN C. DAYAP, ANTONIO DEDELES, NARCISO D. DIAZ, JOVENIANO REYES, RODOLFO C. SALVA, AVELINO C. BAJANA, PRAXEDES BAJANA, ALEJANDRO T. GIMOL, MELINA B. SEDIGO and HERMINIGILDO VILLAFLORES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; EXHAUSTION OF ADMINISTRATIVE REMEDIES; RECOURSE TO COURT ACTION WILL NOT PROSPER UNTIL ALL REMEDIES HAVE BEEN EXHAUSTED AT THE ADMINISTRATIVE LEVEL; CASE AT BAR. — Recourse to court action will not prosper until all remedies have been exhausted at the administrative level. x x x Protests regarding the implementation of the CARP fall under the exclusive jurisdiction of the DAR Secretary. He determines whether a tract of land is covered by or exempt from CARP. Likewise, questions regarding the eligibility of CARP beneficiaries must be addressed to him. The DAR Secretary decides to whom lands placed under the CARP shall be distributed. Before PCPCI filed its petition for *certiorari* in the CA, it did not file a protest or opposition questioning the propriety of subjecting the Polo estate to the CARP. Neither did it assail the eligibility of petitioners-

[6] Also referred to as "Robert C. Bajana" in some parts of the records.

beneficiaries before the DAR Secretary. There were available administrative remedies under the DARAB Rules but PCPCI did not avail of them. Moreover, a special civil action for *certiorari* under Rule 65 of the Rules of Court can be availed of only in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law. Here, recourse to the DAR Secretary was the plain, speedy and adequate remedy in the ordinary course of law contemplated by Rule 65.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM; RECLASSIFIED AGRICULTURAL LANDS MUST UNDERGO THE PROCESS OF CONVERSION THEREIN. — In *Ros v. DAR,* we held that reclassified agricultural lands must undergo the process of conversion in the DAR before they may be used for other purposes. x x x The approval of the DAR for the conversion of agricultural land into an industrial estate is a condition precedent for its conversion into an ecozone. A proposed ecozone cannot be considered for Presidential Proclamation unless the landowner first submits to PEZA a land use conversion clearance certificate from the DAR.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; POWERS OF LOCAL GOVERNMENT UNITS; RECLASSIFICATION OF LANDS; A CITY OR MUNICIPALITY CAN RECLASSIFY LAND ONLY THROUGH THE ENACTMENT OF AN ORDINANCE.— Section 20 of the Local Government Code provides that a city or municipality can reclassify land only through the enactment of an ordinance.

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW; ONLY THE DEPARTMENT OF AGRARIAN REFORM SECRETARY CAN IDENTIFY AND SELECT COMPREHENSIVE AGRARIAN REFORM PROGRAM BENEFICIARIES. — Section 22 of the CARL provides: Section 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *baranggay*, or in the absence thereof, landless residents of the same municipality in the following order of priority: (a) agricultural lessees and share tenants; (b) regular farmworkers; (c) seasonal farmworkers; (d) other farmworkers; (e) actual tillers or occupants of public lands; (f) collectives or cooperatives of

> the abovementioned beneficiaries and (g) others directly working on the land. x x x A basic qualification of a beneficiary is his willingness, aptitude and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the [Presidential Agrarian Reform Council]. x x x This provision enumerates who are qualified beneficiaries of the CARP. Determining whether or not one is eligible to receive land involves the administrative implementation of the program. For this reason, only the DAR Secretary can identify and select CARP beneficiaries. Thus, courts cannot substitute their judgment unless there is a clear showing of grave abuse of discretion. Section 22 of the CARL does not limit qualified beneficiaries to tenants of the landowners.

APPEARANCES OF COUNSEL

Delfin B. Samson for DAR/DLR.

Senining Belcina Atup Entise Limalima Jumao-as & Bantilan Law Office for Polo Coconut Plantation Company, Inc., *et al.*

D E C I S I O N

CORONA, *J.*:

In the late 1990s, respondent Polo Coconut Plantation Co., Inc. (PCPCI) sought to convert 280 hectares of its Polo Coconut Plantation[7] (Polo estate) in Tanjay, Negros Oriental into a special economic zone (ecozone) under the Philippine Economic Zone Authority (PEZA). On December 19, 1998, PEZA issued Resolution No. 98-320 favorably recommending the conversion of the Polo estate into an ecozone[8] subject to certain terms

[7] Described as Lot 3478-D of Psd-30972 with a total area of 431 hectares and covered by Transfer Certificate of Title (TCT) No. T-2304.

[8] Annex "Y", *rollo* (G.R. No. 169271), pp. 97-100.

and conditions including the submission of "all government clearances, endorsements and documents required under Rule IV, Section 3 of the Rules and Regulations to Implement Republic Act (RA) 7916."

The following year, PCPCI applied for the reclassification of its agricultural lands into mixed residential, commercial and industrial lands with the municipal government of Tanjay. After conducting the prescribed hearing, the *Sangguniang Bayan* of Tanjay adopted Resolution No. 344 granting PCPCI's application on November 3, 1999.

When Tanjay became a city, its *Sangguniang Panglungsod* adopted Resolution No. 16 approving Tanjay's Comprehensive Land Use Plan and Zoning Ordinance where PCPCI's real properties, including the Polo estate, were reclassified as mixed residential, commercial and industrial lands.[9]

Sometime in 2003, petitioner Department of Agrarian Reform (DAR), through Provincial Agrarian Reform Officer Stephen M. Leonidas, notified PCPCI that 394.9020 hectares of the Polo estate had been placed under the Comprehensive Agrarian Reform Program (CARP)[10] and would be acquired by the government.

Thereafter, Leonidas requested the Registrar of Deeds of Negros Oriental to cancel PCPCI's certificate of title and to issue a new one in the name of the Republic of the Philippines. He likewise asked Region VII Regional Agrarian Reform Adjudicator Arnold C. Arrieta to determine the just compensation due to PCPCI.[11]

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[9] Approved by the *Sangguniang Panlalawigan* of Negros Oriental in Resolution No. 312 on July 12, 2001.

[10] In its earlier letter to PCPCI, DAR stated that the September 16, 1991 notice of coverage subjecting "lands covered by TCT Nos. T-1187, *etc*." to the CARP included the Polo estate (which was covered by TCT No. T-2304). Annex "J", *rollo* (G.R. No. 169271) p. 76. Subsequently, this was reiterated in letters signed by Leonidas (dated April 23, 2003 and May 5, 2003, respectively). Annexes "K", and "L", *id.*, pp. 77-78.

[11] Docketed as RARAD Case No. VII-N-1284-2004.

On January 29, 2004, a new certificate of title was issued in the name of the Republic of the Philippines.[12] The next day, that title was cancelled and another was issued in the name of petitioners in G.R. No. 169271 (petitioners-beneficiaries).[13]

Meanwhile, on March 11, 2004, Arrieta approved the land valuation (₱85,491,784.60)[14] of the Land Bank of the Philippines for the Polo estate. PCPCI moved for reconsideration but it was denied in an order dated March 30, 2004.

On July 16, 2004, Leonidas informed PCPCI that a relocation survey of the Polo estate would be conducted. PCPCI moved for the suspension of the survey but it was denied.[15]

Aggrieved, PCPCI filed a petition for *certiorari*[16] in the Court of Appeals (CA) asserting that the DAR acted with grave abuse of discretion in placing the Polo estate under the CARP. It argued that the Polo estate should not be subjected to the CARP because Resolution No. 16 had already designated it as mixed residential, commercial and industrial land. Moreover, petitioners-beneficiaries were not qualified to receive land under the CARP.

In its February 16, 2005 decision, the CA found that the Polo estate was no longer agricultural land when the DAR placed it under the CARP in view of Resolution No. 16. Furthermore, petitioners-beneficiaries were not qualified beneficiaries as they were not tenants of PCPCI. Thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DECLARING** as **NOT VALID** the acts of the [DAR] of subjecting PCPCI's [Polo estate] to the coverage of the

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[12] TCT No. T-36318.

[13] TCT No. T-802/ Certificate of Land Ownership Award No. 00114438. Annex "C", *rollo* (G.R. No. 169271), pp. 62-68.

[14] Annex "M", *id.*, p. 79.

[15] Signed by regional adjudicator Arnold C. Arrieta. Dated August 20, 2004. Annex "N", *id.*, pp. 80-82.

[16] Docketed as CA-G.R. CEB-SP No. 00043.

CARP, of canceling and causing the cancellation of [PCPCI's] Transfer Certificate of Title No. T-2304 covering such land, of issuing or causing the issuance of Transfer Certificate of Title No. T-36318 for this land in the name of the Republic of the Philippines by way of transfer to it, of issuing or causing the issuance of Transfer Certificate of Title No. T-802 for the said land in the names of [petitioner-beneficiaries] in the case at bench by way of award of them of such land as purported farm beneficiaries and of doing other things with the end in view of subjecting [the Polo estate] to CARP coverage, **SETTING ASIDE** and **ENJOINING** such acts and the consequence thereof, **ORDERING** the [petitioner-beneficiaries] to vacate the premises of [the Polo estate] if they had entered such premises, and **ORDERING** the respondent Register of Deeds of Negros Oriental to cancel Transfer Certificate of Title Nos. T-36318 and T-802 and to reinstate Transfer Certificate of Title No. T-2304 in the name of petitioner PCPCI.

SO ORDERED.[17]

Both the DAR and petitioners-beneficiaries moved for reconsideration but they were denied.[18] Hence, this recourse.

The DAR asserts that the reclassification of the Polo estate under Resolution No. 16 as mixed residential, commercial and industrial land did not place it beyond the reach of the CARP. Petitioners-beneficiaries, on the other hand, insist that they were qualified beneficiaries. While they were neither farmers nor regular farmworkers of PCPCI, they were either seasonal or other farmworkers.

There is merit in these petitions.

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[17] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio A. Abarintos and Vicente L. Yap (retired) of the Special Twentieth Division of the Court of Appeals. Dated February 16, 2005. *Rollo* (G.R. No. 168787), pp. 32-45 and *rollo* (G.R. No. 169271), pp. 46-59.

[18] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio A. Abarintos and Sesinando E. Villon of the Former Special Twentieth Division of the Court of Appeals. Dated June 29, 2005. *Rollo* (G.R. No. 168787), pp. 48-49 and *rollo* (G.R. No. 169271), pp. 60-61.

NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES

Recourse to court action will not prosper until all remedies have been exhausted at the administrative level.[19]

Section 3, Rule II of the 2003 DARAB Rules of Procedure (DARAB Rules) provides:

> Section 3. Agrarian Law Implementation Cases. The Adjudicator or Board shall have no jurisdiction over matters involving the implementation of RA 6657 otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other related agrarian laws enunciated by pertinent rules and administrative orders, which shall be under the **exclusive prerogative of and cognizable by the Office of the Secretary of the DAR** in accordance with his issuances to wit:

3.1. Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of [certificates of land ownership award] and [emancipation patents], including protests or oppositions thereto and petitioners for lifting of such coverage;

3.2. Classification, identification, inclusion, exclusion, qualification or disqualification of potential/actual farmer/beneficiaries; (emphasis supplied)

x x x x x x x x x

Protests regarding the implementation of the CARP fall under the exclusive jurisdiction of the DAR Secretary. He determines whether a tract of land is covered by or exempt from CARP.[20] Likewise, questions regarding the eligibility of CARP beneficiaries must be addressed to him. The DAR Secretary decides to whom lands placed under the CARP shall be distributed.[21]

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[19] *Board of Commissioners v. de la Rosa*, 274 Phil. 1156 (1991).

[20] See *DAR v. Philippine Communication Satellite Corporation,* G.R. No. 152640, 15 June 2006, 490 SCRA 729.

[21] See *Lercanda v. Jalandoni,* 426 Phil. 319, 328-329 (2002) and *Joson v. Mendoza,* G.R. No. 144705, 25 August 2005, 468 SCRA 95, 105-107.

Before PCPCI filed its petition for *certiorari* in the CA, it did not file a protest or opposition questioning the propriety of subjecting the Polo estate to the CARP. Neither did it assail the eligibility of petitioners-beneficiaries before the DAR Secretary. There were available administrative remedies under the DARAB Rules but PCPCI did not avail of them.

Moreover, a special civil action for *certiorari* under Rule 65 of the Rules of Court can be availed of only in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law.[22] Here, recourse to the DAR Secretary was the plain, speedy and adequate remedy in the ordinary course of law contemplated by Rule 65.

NON-CONVERSION TO MIXED RESIDENTIAL, COMMERCIAL AND INDUSTRIAL LAND

In *Ros v. DAR*,[23] we held that reclassified agricultural lands must undergo the process of conversion in the DAR[24] before they may be used for other purposes.[25] Since the DAR never approved the conversion of the Polo estate from agricultural to another use, the land was never placed beyond the scope of the CARP.

The approval of the DAR for the conversion of agricultural land into an industrial estate is a condition precedent for its conversion into an ecozone.[26] A proposed ecozone cannot be

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[22] *Equitable PCI Bank v. Ng Sheung Ngor*, G.R. No. 171545, 19 December 2007.

[23] G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[24] See DAR Administrative Order No. 01, s. 1999 and DA Administrative Order No. 37, s. 1999.

[25] *Ros v. DAR*, *supra* note 23 at 478-479.

[26] Republic Act (RA) 7916, Sec. 5 provides:

Section 5. Establishment of ECOZONES.—To ensure the viability and geographic dispersal of ECOZONES through a system of prioritization, the following areas are initially identified as ECOZONES, subject to the criteria specified of Section 6:

considered for Presidential Proclamation unless the landowner first submits to PEZA a land use conversion clearance certificate from the DAR.[27] This PCPCI failed to do.

PEZA Resolution No. 98-320 expressly provides:

Resolved, that the application of [PCPCI] for (1) declaration of the 280-hectare property in Brgy. Polo, Municipality of Tanjay, Province of Negros Oriental as a Special Economic Zone, subject to Presidential Proclamation, henceforth to be known as **POLO ECOCITY- SPECIAL ECONOMIC ZONE** and (2) registration as

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x x x x x x x x x

(mm) Any **private industrial estate** which shall voluntarily apply for conversion into an ECOZONE. (emphasis supplied)

x x x x x x x x x

See also DAR Administrative Order No. 1, s. 1999, Sec. 6(e) which provides:

Section 6. *Priority Development Areas.*—In accordance with EO 124, s. 1993, EO 84, s. 1994 and RA 7916, the following are priority development areas for land conversion:

x x x x x x x x x

(e) Agricultural areas intended for ECOZONE Projects pursuant to RA 7916.

x x x x x x x x x

[27] Rules and Regulation to Implement RA 7916. Part III, Rule IV, Sec. 3 provides:

Section 3. Development of the Areas/Documentary Requirements. –

x x x x x x x x x

The proposed ECOZONE shall not be considered for Presidential Proclamation unless the following sets of documents have been submitted directly to PEZA:

(1) Set A- Pertinent land use/clearances/certificates to be secured from the concerned Regional Land Use Committee (RLUC) member-agencies as follows:

- Land Use Conversion Clearance Certificate from the Department of Agrarian Reform (DAR);
- Certification from the Department of Agriculture (DA) that the proposed area is not covered by Administrative Order No. 20 and that such land has ceased to be economically feasible for agricultural purposes;

x x x x x x x x x

the Developer/Owner of the said ECOZONE is hereby **APPROVED** subject to the following terms and conditions:

x x x x x x x x x

2. Prior to PEZA's endorsement of the subject area to the President for proclamation as an ECOZONE, the PCPCI shall submit all government clearances, endorsements and documents required under Rule IV, Section 3 of the [Rules and Regulations to Implement RA 7916];

x x x x x x x x x

This condition proves that the favorable recommendation of PEZA did not *ipso facto* change the nature of the Polo estate. The property remained as agricultural land and, for this reason, was still subject to the CARP.

In fact, Resolution No. 16 did not exempt PCPCI's agricultural lands (including the Polo estate) from the CARP. Section 20 of the Local Government Code[28] provides that a city or municipality can reclassify land only through the enactment of an ordinance. In this instance, reclassification was undertaken by mere resolution;[29] thus, it was invalid.

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[28] LOCAL GOV'T CODE, Section 20. *Reclassification of Lands.* (a) **A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands** and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial or industrial purposes, as determined by the sanggunian concerned x x x x x x x x x x x x

[29] A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently – a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the *Sanggunian* members. (*Municipality of Parañaque v. V.M. Realty Corporation*, G.R. 127820, 20 July 1998, 292 SCRA 678.)

QUALIFICATION OF CARP BENEFICIARIES

Section 22 of the CARL provides:

Section 22. *Qualified Beneficiaries.* – The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *baranggay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

(b) regular farmworkers;

(c) seasonal farmworkers;

(d) other farmworkers;

(e) actual tillers or occupants of public lands;

(f) collectives or cooperatives of the abovementioned beneficiaries and

(g) others directly working on the land.

x x x x x x x x x

A basic qualification of a beneficiary is his willingness, aptitude and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the [Presidential Agrarian Reform Council].

x x x x x x x x x

This provision enumerates who are qualified beneficiaries of the CARP. Determining whether or not one is eligible to receive land involves the administrative implementation of the program. For this reason, only the DAR Secretary can identify and select CARP beneficiaries. Thus, courts cannot substitute their judgment unless there is a clear showing of grave abuse of discretion.[30]

[30] *Joson v. Mendoza, supra* note 21 at 102-104. (citations omitted).

Section 22 of the CARL does not limit qualified beneficiaries to tenants of the landowners. Thus, the DAR cannot be deemed to have committed grave abuse of discretion simply because its chosen beneficiaries were not tenants of PCPCI.

WHEREFORE, the petitions are hereby *GRANTED*. The February 16, 2005 decision and June 29, 2005 resolution of the Court of Appeals in CA-G.R. CEB-SP No. 00043 are *REVERSED* and *SET ASIDE*.

The March 11, 2004, March 30, 2004 and August 30, 2004 orders of Region VII Regional Agrarian Reform Adjudicator Arnold C. Arrieta in RARAD Case No. VII-N-1284-2004 are *REINSTATED*. Transfer Certificate of Title No. T-802 and Certificate of Land Ownership Award No. 00114438 are declared *VALID*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169549. September 3, 2008]

JOHN HANCOCK LIFE INSURANCE CORPORATION and/or MICHAEL PLAXTON, *petitioners, vs.* **JOANNA CANTRE DAVIS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; EXPLAINED.— Misconduct involves "the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in

character, and implies wrongful intent and not mere error in judgment." For misconduct to be serious and therefore a valid ground for dismissal, it must be: 1. of grave and aggravated character and not merely trivial or unimportant and 2. connected with the work of the employee.

2. ID.; ID.; ID.; ID.; CAUSE ANALOGOUS TO SERIOUS MISCONDUCT; A VOLUNTARY AND/OR WILLFUL ACT OR OMISSION ATTESTING TO AN EMPLOYEE'S MORAL DEPRAVITY. — Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail. For an employee to be validly dismissed for a cause analogous to those enumerated in Article 282, the cause must involve a voluntary and/or willful act or omission of the employee. A cause analogous to serious misconduct is a voluntary and/or willful act or omission attesting to an employee's moral depravity. Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes and Manalastas for petitioners.
R.P. Nograles Law Office for respondent.

D E C I S I O N

CORONA, *J.*:

Respondent Joanna Cantre Davis was agency administration officer of petitioner John Hancock Life Insurance Corporation.[1]

On October 18, 2000, Patricia Yuseco, petitioner's corporate affairs manager, discovered that her wallet was missing. She immediately reported the loss of her credit cards to AIG and BPI Express. To her surprise, she was informed that "Patricia Yuseco" had just made substantial purchases using her credit cards in various stores in the City of Manila. She was also told

[1] Henceforth, John Hancock Life Insurance Corporation shall be referred to as "petitioner."

that a proposed transaction in Abenson's-Robinsons Place was disapproved because "she" gave the wrong information upon verification.

Because loss of personal property among its employees had become rampant in its office, petitioner sought the assistance of the National Bureau of Investigation (NBI). The NBI, in the course of its investigation, obtained a security video from Abenson's showing the person who used Yuseco's credit cards. Yuseco and other witnesses positively identified the person in the video as respondent.

Consequently, the NBI and Yuseco filed a complaint for qualified theft against respondent in the office of the Manila city prosecutor. But because the affidavits presented by the NBI (identifying respondent as the culprit) were not properly verified, the city prosecutor dismissed the complaint due to insufficiency of evidence.

Meanwhile, petitioner placed respondent under preventive suspension and instructed her to cooperate with its ongoing investigation. Instead of doing so, however, respondent filed a complaint for illegal dismissal[2] alleging that petitioner terminated her employment without cause.

The labor arbiter, in a decision dated May 21, 2002,[3] found that respondent committed serious misconduct (she was the principal suspect for qualified theft committed inside petitioner's office during work hours). There was a valid cause for her dismissal. Thus, the complaint was dismissed for lack of merit.

Respondent appealed[4] the labor arbiter's decision to the National Labor Relations Commission (NLRC) which affirmed the assailed decision on July 31, 2003.[5] Respondent moved for

[2] Docketed as NLRC NCR Case No. 30-11-04413-00.

[3] Penned by labor arbiter Roma C. Asinas. *Rollo,* pp. 162-171.

[4] Docketed as NLRC CA No. 032865-02.

[5] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan of the Second Division of the National Labor Relations Commission, *rollo*, pp. 172-180.

reconsideration but it was denied in a resolution dated October 30, 2003.[6]

Aggrieved, respondent filed a petition for *certiorari*[7] in the Court of Appeals (CA) claiming that the NLRC committed grave abuse of discretion in affirming the decision of the labor arbiter. She claimed there was no valid cause for her termination because the city prosecutor of Manila "did not find probable cause for qualified theft against her." The dismissal of the complaint proved that the charges against her were based on suspicion.

The CA, in its July 4, 2005 decision,[8] found that the labor arbiter and NLRC merely adopted the findings of the NBI regarding respondent's culpability. Because the affidavits of the witnesses were not verified, they did not constitute substantial evidence. The labor arbiter and NLRC should have assessed evidence independently as "unsubstantiated suspicions, accusations and conclusions of employers (did) not provide legal justification for dismissing an employee." Thus, the CA granted the petition.

Petitioner moved for reconsideration but it was denied.[9] Hence, this petition.

The issue in this case is whether or not petitioner substantially proved the presence of valid cause for respondent's termination.

Petitioner essentially argues that the ground for an employee's dismissal need only be proven by substantial evidence. Thus, the dropping of charges against an employee (specially on a technicality such as lack of proper verification) or his subsequent acquittal does not preclude an employer from dismissing him due to serious misconduct.

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[6] *Id.*, pp. 181-182.

[7] Docketed as CA-G.R. SP No. 81515.

[8] Penned by Associate Justice Renato C. Dacudao (retired) and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao of the Thirteenth Division of the Court of Appeals. *Rollo*, pp. 55-81.

[9] Dated September 1, 2005. *Id.*, p. 83.

We grant the petition.

Article 282 of the Labor Code provides:

Article 282. Termination by Employer. – An employer may terminate an employment for any of the following causes:

(a) **Serious misconduct** or willful disobendience by the employee of the lawful orders of his employer or his representatives **in connection with his work**;

x x x x x x x x x

(e) Other causes analogous to the foregoing.

Misconduct involves "the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[10] For misconduct to be serious and therefore a valid ground for dismissal, it must be:

1. of grave and aggravated character and not merely trivial or unimportant and

2. connected with the work of the employee.[11]

In this case, petitioner dismissed respondent based on the NBI's finding that the latter stole and used Yuseco's credit cards. But since the theft was not committed against petitioner itself but against one of its employees,[12] respondent's misconduct was not work-related and therefore, she could not be dismissed for serious misconduct.

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[10] Azucena, *EVERYONE'S LABOR CODE*, 4th ed., p. 335.

[11] *Id.*, citing Department of Labor Manual, Sec. 4343.01. See also *Ballao v. Court of Appeals*, G.R. No. 162342, 11 October 2006, 504 SCRA 227, 236 citing *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, 31 March 2005, 454 SCRA 737, 767-768.

[12] *Compare Pangasinan III Electric Cooperative, Inc. v. National Labor Relations Commission*, G.R. No. 89876, 13 November 1992, 215 SCRA 669, 673-674 and *Litton Mills, Inc. v. Sales*, G.R. No. 151400, 1 September 2004, 437 SCRA 488, 500-501.

Nonetheless, Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail.[13] For an employee to be validly dismissed for a cause analogous to those enumerated in Article 282, the cause must involve a voluntary and/or willful act or omission of the employee.[14]

A cause analogous to serious misconduct is a voluntary and/or willful act or omission attesting to an employee's moral depravity.[15] Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct.[16]

Did petitioner substantially prove the existence of valid cause for respondent's separation? Yes. The labor arbiter and the NLRC relied not only on the affidavits of the NBI's witnesses but also on that of respondent. They likewise considered petitioner's own investigative findings. Clearly, they did not merely adopt the findings of the NBI but independently assessed evidence presented by the parties. Their conclusion (that there was valid cause for respondent's separation from employment) was therefore supported by substantial evidence.

All things considered, petitioner validly dismissed respondent for cause analogous to serious misconduct.

WHEREFORE, the petition is hereby *GRANTED*. The July 4, 2005 decision and September 1, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 81515 are *REVERSED* and *SET ASIDE*.

The July 31, 2003 decision and October 30, 2003 resolution of the National Labor Relations Commission in NLRC CA

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[13] WEBSTER'S *THIRD NEW INTERNATIONAL DICTIONARY*, 1993 ed., p. 77.

[14] *Nadura v. Benguet Consolidated, Inc.*, 116 Phil. 28, 31 (1962).

[15] See *Oania v. National Labor Relations Commission*, G.R. Nos. 97162-64, 1 June 1995, 244 SCRA 669, 674.

[16] See *M.F. Violago Oiler Tank Trucks v. NLRC*, 202 Phil. 872 (1982) and *A. Marquez, Inc. v. Leogardo*, 213 Phil. 217 (1984).

No. 032865-02 affirming the May 21, 2002 decision of the labor arbiter are *REINSTATED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176504. September 3, 2008]

FERDINAND A. CRUZ, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; WHEN AN ACCUSED PLEADS TO THE CHARGE, HE IS DEEMED TO HAVE WAIVED THE RIGHT TO PRELIMINARY INVESTIGATION AND THE RIGHT TO QUESTION ANY IRREGULARITY THAT SURROUNDS IT. — The settled rule is that when an accused pleads to the charge, he is deemed to have waived the right to preliminary investigation and the right to question any irregularity that surrounds it.

2. CRIMINAL LAW; THEFT; ELEMENTS. — The elements of the crime of theft are the following: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.

3. ID.; ID.; WHEN QUALIFIED. — Under Article 310 of the Revised Penal Code, theft is qualified when it is, among others, committed with grave abuse of confidence, to wit: "ART. 310. *Qualified theft*. — The crime of theft shall be punished by the penalties

next higher by two degrees than those respectively specified in the next preceding article, if committed x x x with grave abuse of confidence x x x."

4. ID.; ID.; INTENT TO GAIN; WHEN PRESUMED. – Intent to gain (*animus lucrandi*) is presumed to be alleged in an information, in which it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of asportation.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY; WHEN THE FACTUAL FINDINGS OF THE TRIAL COURT HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT. — When the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.

6. CRIMINAL LAW; QUALIFIED THEFT; PENALTY; CASE AT BAR.— Under Article 310 of the Revised Penal Code, the penalty for Qualified Theft is two degrees higher than that specified in Article 309. Paragraph 1 of Article 309 provides that if the value of the thing stolen is more than ₱12,000.00 but does not exceed ₱22,000.00, the penalty shall be *prision mayor* in its minimum and medium periods. In this case, the amount stolen was ₱15,000.00. Two degrees higher than *prision mayor* minimum and medium is *reclusion temporal* in its medium and maximum periods. Applying the Indeterminate Sentence Law, the minimum shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of 10 years and 1 day to 14 years and 8 months. There being neither aggravating nor mitigating circumstance in the commission of the offense, the maximum period of the indeterminate sentence shall be within the range of 16 years, 5 months and 11 days to 18 years, 2 months and 20 days.

APPEARANCES OF COUNSEL

The Solicitor General 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 Rules of Court which assails the Decision[1] dated 27 April 2006 of the Court of Appeals in CA-G.R. CR No. 27661 which affirmed the Decision[2] and the Order[3] of the Regional Trial Court (RTC) of Makati City, Branch 140, finding petitioner Ferdinand A. Cruz (Ferdinand) guilty beyond reasonable doubt of the crime of Qualified Theft.

On 10 July 1997, an Information was filed before the RTC of Makati City charging Ferdinand with Qualified Theft. The accusatory portion of the Information reads:

> That on or about the 25th day of October 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Marketing Manager of Porta-Phone Rentals, Inc. with office address located at 3/F ENZO Bldg., Sen. Gil Puyat Avenue, Makati City, herein represented by Juanito M. Tan, Jr. and had access to the funds of the said corporation, with intent to gain and without the knowledge and consent of said corporation, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of ₱15,000.00 belonging to said Porta-Phone Rentals, Inc., to the damage and prejudice of the latter in the aforesaid amount of ₱15,000.00.[4]

The case was docketed as Criminal Case No. 97-945. During the arraignment on 22 August 1997, Ferdinand, with the assistance of counsel *de parte*, entered a plea of not guilty.[5] Thereafter, trial on the merits ensued.

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[1] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao, concurring. *Rollo*, pp. 93-104.

[2] Penned by Judge Leticia P. Morales, Records, Vol. I, pp. 284-289.

[3] Records, pp. 62-67.

[4] Records, Vol. I, p. 1.

[5] *Id.* at 57.

At the trial, the prosecution presented the following witnesses: (1) Juanito M. Tan, Jr., the General Manager of Porta-Phone Rentals, Inc. (Porta Phone) when the incident in question took place. He testified that Ferdinand appropriated for himself the amount of ₱15,000.00, an amount which should have been remitted to the company; (2) Catherine Villamar (Catherine), the Credit and Collection Officer of Porta-Phone, who discovered that Ferdinand issued a receipt for ₱15,000.00 from Hemisphere-Leo Burnett (Hemisphere), and who also testified that Ferdinand misappropriated the amount for his own benefit and, when she confronted him, said he had unpaid reimbursements from the company; (3) Luningning Morando, the accounting supervisor of Porta-Phone, corroborated the alleged fact that Ferdinand received the amount and did not turn over the same to the company; and (4) Wilson J. So, Chief Executive Officer of Porta-Phone, who testified that meetings were held to demand from Ferdinand the subject sum of money.

As documentary evidence, the prosecution offered the following: Exhibit "A" – Official Receipt No. 2242, the receipt in which Ferdinand acknowledged that he received the amount of ₱15,000.00 from Hemisphere; Exhibit "B" – the Minutes of the Meeting held on 30 October 1996 attended by Wilson So, Juanito Tan, Luningning Morando and Ferdinand, wherein Wilson So asked Ferdinand the reason for the former's refusal to remit the ₱15,000.00 to the company, and Ferdinand answered that there was no need to turn over the said amount because he had outstanding reimbursements from the company in the amount of ₱8,518.08; Exhibit "C" – the Resignation Letter of Ferdinand; Exhibit "D"– the Inter-Office Demand Letter dated 7 November 1996, addressed to Ferdinand from Juanito M. Tan, Jr. requiring the former to return the amount of ₱15,000.00; Exhibit "E"– the Handwritten Explanation of Ferdinand dated 8 December 1996, that he remitted the amount to Luningning Morando; Exhibit "F"– Inter-Office Memorandum dated 8 November 1996, issued by Juanito Tan and addressed to Luningning Morando to explain her side regarding the allegation of Ferdinand that she received the ₱15,000.00; Exhibit "G"– Inter-Office Memorandum prepared by Luningning Morando dated 9 November 1996,

denying the allegation that she received the amount of ₱15,000.00 from Ferdinand; Exhibit "H"– Inter-Office Memorandum dated 11 November 1996, issued by Juanito Tan for Ferdinand to further explain his side in light of Luningning Morando's denial that she received the amount. It also advised Ferdinand to wait for the verification and computation of his claim for reimbursements; Exhibit "I"– Formal Demand Letter dated 25 November 1996, addressed to Ferdinand and issued by the legal counsel of Porta-Phone Rentals, Inc., asking the former to return to the company the subject amount; Exhibit "J"– the Affidavit of Complaint executed by Juanito Tan against Ferdinand; Exhibit "K"– the Collection List dated 30 October 1996, showing that Ferdinand received from Hemisphere the amount of ₱15,000.00, and the same was not turned over to Catherine; Exhibit "L"– Reply-Affidavit dated 5 February 1997, executed by Juanito M. Tan, Jr.; Exhibit "M"– the Sur-Rejoinder Affidavit of Juanito M. Tan, Jr. dated 21 February 1997.

The collective evidence adduced by the prosecution shows that at around 5:30 p.m. of 25 October 1996, in the City of Makati, Ferdinand, who is a Marketing Manager of Porta-Phone, a domestic corporation engaged in the lease of cellular phones and other communication equipment, went to the office of Porta-Phone located on the third floor of Enzo Building, Senator Gil Puyat Avenue, and took hold of a pad of official receipts from the desk of Catherine, Porta-Phone's collection officer. With the pad of official receipts in his hands, Ferdinand proceeded to his client, Hemisphere, and delivered articles of communication equipment. Although he was not an authorized person to receive cash and issue receipts for Porta-Phone, Ferdinand received from Hemisphere the amount of ₱15,000.00 as refundable deposit for the aforesaid equipment. On 26 October 1996, Ferdinand went to Porta-Phone and returned the pad of receipts, but failed to deliver the cash he received from Hemisphere. On 28 October 1996, the next working day, Catherine checked the booklet of official receipts and found that one of the official receipts was missing. The green duplicate of the missing official receipt, however, showed that Ferdinand received the amount of ₱15,000.00 from Hemisphere. Upon learning of Ferdinand's

receipt of the said amount, Catherine confronted Ferdinand, who answered that he deposited the amount to his personal bank account. Catherine then instructed Ferdinand to remit the amount the next day.[6] Catherine reported the incident to the accounting supervisor, Luningning Morando, who, in turn, reported the same to the General Manager, Junito Tan. The following day, Ferdinand went to the office but did not deliver the amount to Catherine, reasoning that Porta-Phone still owed him unpaid reimbursements.[7] This incident came to the knowledge of Chief Executive Officer Wilson So. Thus, on 30 October 1996, Wilson So invited Ferdinand, Juanito and Luningning to a meeting. In the meeting, Wilson So demanded that Ferdinand return the collection. Ferdinand refused to turn over the amount to the company. He would return the amount only upon his receipt of his reimbursements from the company. Since Ferdinand adamantly withheld the collected amount, Juanito issued a demand letter dated 7 November 1996, ordering the former to deliver the amount to the company. Ferdinand answered, this time claiming that he had already remitted the amount to Luningning. With this, Juanito issued a memorandum dated 8 November 1996, addressed to Luningning asking her to explain her side regarding the allegation of Ferdinand that she received the ₱15,000.00. Luningning completely denied having received the amount from Ferdinand. Juanito then issued another letter to Ferdinand to further explain his side in view of Luningning's denial that she received the amount. In the letter, Juanito also advised Ferdinand to wait for the verification and computation of his claim for reimbursements. With the conflicting claims of Luningning and Ferdinand, another meeting was set on 14 November 1996. In that meeting Luningning again denied having received the amount. Ferdinand did not appear in the meeting. Later, a formal demand letter was issued to Ferdinand by Porta-Phone's legal counsel, which letter went unheeded. Several attempts to reach Ferdinand proved to be futile. This prompted the company to file a criminal complaint against Ferdinand.

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[6] TSN, 15 October 1997, p. 7.

[7] TSN, 15 October 1997, p. 8.

The defense alleged that the amount involved was already turned over to the company through Luningning. To substantiate this, the defense presented Ferdinand as its only witness.

Ferdinand testified that on 25 October 1996, he delivered to Hemisphere several communication gadgets and received from the same the amount of ₱15,000.00 as refundable deposit (the amount required by Porta-Phone from its lessor-client to answer for the damage that may befall the items leased) for the delivered items. Since he did not bring with him the official receipt of Porta-Phone, he merely acknowledged having received the amount in an Acknowledgement Receipt issued by Hemisphere. Considering that it was already late in the afternoon when he delivered the communication items, Ferdinand brought the said amount home. The following day, he went to the company's accounting supervisor, Luningning, to turn over to her the amount. Luningning received the money and instructed Ferdinand to fill up the details of the transaction in Official Receipt No. 2242. When Ferdinand asked Luningning to affix her signature to the official receipt to acknowledge that she received the amount, the latter declined and instead asked the former to affix his signature, since it was he who closed the deal.

Later, on 28 October 1996, Catherine approached him and asked him to affix his signature to the triplicate copy of Official Receipt No. 2242.

Ferdinand admitted that he attended the meeting of 30 October 1996 with Juanito, Luningning and Wilson So. He, however, claimed that the discussion centered on his entitlement to reimbursements from the company. Thereupon, Wilson So got angry with him and asked him to resign, owing to his persistent claim for reimbursement. After this, the company withheld his salary, prompting him to file a labor case against the same on 4 November 1996.

On 30 June 2001, the RTC rendered a decision finding Ferdinand guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

WHEREFORE, finding the accused FERDINAND A. CRUZ, GUILTY beyond reasonable doubt for the crime of QUALIFIED THEFT, he is hereby sentenced to suffer imprisonment of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum; to indemnify the offended party in the amount of FIFTEEN THOUSAND (₱15,000.00) PESOS and to pay the costs.[8]

On 2 August 2001, Ferdinand filed a Motion for New Trial on two grounds: (1) absence of a preliminary investigation for the crime of qualified theft; and (2) newly discovered evidence. Anent the first ground, it must be noted that in the beginning, Ferdinand was being indicted for Estafa/Falsification of Private Document. The prosecutor later found that the proper charge should be for Qualified Theft. Ferdinand argued that since his counter-affidavits were for the charge Estafa/Falsification of Private Document, he claimed that preliminary investigation for Qualified Theft was absent. With regard to the second ground, Ferdinand argued that newly discovered evidence, *i.e.*, the testimony of a certain Marilen Viduya, could change the judgment on the case. The RTC granted the motion based on the second ground, and set aside its 30 June 2001 decision.

Marilen Viduya, a former employee of Hemisphere, testified that she asked Ferdinand to affix his signature to an acknowledgement receipt for the amount of ₱15,000.00, which was the refundable deposit of Hemisphere for the equipment delivered, because Ferdinand did not bring with him the official receipt of Porta-Phone. She also averred that Luningning went to Hemisphere and conducted an inventory of the delivered communication items. Luningning admitted to her that the ₱15,000.00 was already remitted to Porta-Phone.

In an Order[9] dated 15 July 2003, the RTC declared that it did not find the testimony of Marilen Viduya persuasive. It revived and reinstated its 30 June 2001 decision convicting Ferdinand of the crime charged.

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[8] Records, Vol. I, p. 289.

[9] Records, Vol. II, pp. 62-67.

Dissatisfied, Ferdinand appealed the judgment to the Court of Appeals.

The Court of Appeals, on 27 April 2006, promulgated its Decision affirming the decision of the RTC, thus:

> WHEREFORE, the present appeal is DENIED. The 30 June 2001 Decision of the Regional Trial Court, Branch 140, in Makati City, is hereby AFFIRMED.[10]

Ferdinand filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 4 October 2006.

Hence, the instant petition.

Ferdinand contends that he was denied due process as his trial was pursued without prior clearance from the Department of Labor pursuant to Department of Justice (DOJ) Circular No. 16 which allegedly states that "*clearance must be sought from the Ministry of Labor and /or the Office of the President before taking cognizance of complaints for preliminary investigation and the filing in court of the corresponding information of cases arising out of, or related to, a labor dispute.*" He avers that this circular is designed to avoid undue harassment that the employer may use to cow employees from pursuing money claims against the former.

He also argues that due process was not accorded since he was indicted for qualified theft, even as he was initially investigated for estafa/falsification of private documents. It must be noted that the original indictment was for estafa/ falsification of private documents but later the prosecutor found it proper to charge him with qualified theft. According to him although he was given the chance to file counter-affidavits on the charge of estafa/falsification of private documents, he was not given the opportunity to answer during the preliminary investigation of the crime of qualified theft.

Finally, Ferdinand maintains that his guilt was not established beyond reasonable doubt, absent evidence of the presence of

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[10] *Rollo,* p. 212.

the elements of the crime charged and given the weakness of the evidence proffered by the prosecution.

Ferdinand's arguments are not meritorious.

The settled rule is that when an accused pleads to the charge, he is deemed to have waived the right to preliminary investigation and the right to question any irregularity that surrounds it.[11] In the instant case, Ferdinand did not present evidence that arraignment was forced upon him. On the contrary, he voluntarily pleaded to the charge and actively participated in the trial of the case.

Besides, the prior clearance requirement before taking cognizance of complaints under the cited DOJ circular is not applicable to the case of Ferdinand. The RTC found that the money claim which the Labor Arbiter awarded to Ferdinand covered only his salary during the month of November 1996. It must be noted that the crime attributed to Ferdinand was committed on 25 October 1996 before Ferdinand was entitled to the money claim. In other words, the crime was first committed before the accrual of the money claim. This being the case, it is not remote that it was Ferdinand who used the labor case, which he filed before the Labor Arbiter, to have leverage against the company in the criminal case.

It is not correct for Ferdinand to claim that preliminary investigation on the charge of qualified theft was not accorded him. The truth is, Ferdinand was able to answer the initial charge of estafa/falsification of private documents through his counter-affidavits. Based on the same complaint affidavit and the same sets of evidence presented by the complainant, the prosecutor deemed it proper to charge Ferdinand with qualified theft. Since the same allegations and evidence were proffered by the complainant in the qualified theft, there is no need for Ferdinand to be given the opportunity to submit counter-affidavits anew, as he had already answered said allegations when he submitted

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[11] *Kuizon v. Desierto*, 406 Phil. 611, 630 (2001); *Gonzales v. Court of Appeals*, 343 Phil. 297, 304 (1997); *People v. Baluran*, 143 Phil. 36, 44 (1970).

counter-affidavits for the original indictment of estafa/falsification of private documents.

The RTC correctly convicted Ferdinand of the crime of qualified theft.

The elements of the crime of theft are the following: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[12] Under Article 310 of the Revised Penal Code, theft is qualified when it is, among others, committed with grave abuse of confidence, to wit:

> ART. 310. *Qualified theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed x x x with grave abuse of confidence x x x.

The prosecution established, beyond the shadow of doubt that Ferdinand took and kept the fifteen thousand peso-collection from the company's client. Although Ferdinand insists he remitted the amount personally to Luningning, this claim is self-serving. If indeed he personally delivered the ₱15,000.00, he would have at least required Luningning to acknowledge the receipt thereof before he parted with the same. The Court of Appeals incisively pointed out that it was implausible for Ferdinand to have acceded to executing an acknowledgment receipt in favor of Hemisphere so as to give the latter protection from his company, and yet he did not ask for some kind of receipt when he allegedly turned over the money to Luningning. Quite specious is Ferdinand's argument that he would not have had in his possession a copy of Official Receipt No. 2242, had he not delivered the amount to Luningning. Ferdinand acquired the receipt, not because he remitted the amount, but because he took a sheet from a booklet of receipts containing Official Receipt number 2242 and issued the same to Hemisphere despite his lack of authority to do so,

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[12] *People v. Bago*, 386 Phil. 310, 334-335 (2000).

to maliciously induce the client into believing that he would remit the amount to Porta-Phone.

The collected amount belonged to Porta-Phone and not to Ferdinand. When he received the same, he was obliged to turn it over to the company since he had no right to retain it or to use it for his own benefit, because the amount was a refundable deposit for the communication items leased out by Porta-Phone to Hemisphere. As he had kept it for himself while knowing that the amount was not his, the presence of the element of unlawful taking is settled.

Intent to gain (*animus lucrandi*) is presumed to be alleged in an information, in which it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of asportation.[13] In this case, it was apparent that the reason why Ferdinand took the money was that he intended to gain by it. In the meeting held on 30 October 1996, Ferdinand admitted having received the amount and kept it until his reimbursements from the company would be released to him. Thus, in the initial hearing of 23 September 1997, Ferdinand's counsel made this declaration:

> Court: By the way pañero, what is the defense of the accused?
>
> x x x x x x x x x
>
> Atty. Dizon: Denial your honor. Denial. While it is true that he did not return that ₱15,000.00 pesos, it is because the company owes the accused more than ₱20,000.00.[14]

In the course of his testimony, Ferdinand claimed that he had remitted the amount to Luningning. This insistent claim for reimbursements by Ferdinand would in fact show that he had the intention to take the subject money; hence, intent to gain is made more manifest.

Ferdinand's lack of authority to receive the amount is apparent, because he is not one of the collection officers authorized to collect and receive payment, thus:

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[13] *Avecilla v. People*, G.R. No. 46370, 2 June 1992, 209 SCRA 466, 474.

[14] TSN, 23 September 1997, pp. 122-123.

Atty. Salvador: You made mention of collectibles, who is authorized by the company to collect the collectibles?

Witness: My accounting group is the only group authorized to make collections for and on behalf of the company.

Atty. Salvador: Can you give the names of this accounting group that you have mentioned?

Witness: Yes sir, the group is composed of : Cathy Villamar; Dull Abular; and Evic Besa.

Atty. Salvador: Is the accused part of the group?

Witness: No sir.[15]

The lack of consent by the owner of the asported money is manifested by the fact that Porta-Phone consistently sought the return of the same from Ferdinand in the meetings held for this purpose and in the various letters issued by the company.

As a marketing manager of Porta-Phone, Ferdinand made use of his position to obtain the refundable deposit due to Porta-Phone and appropriate it for himself. He could not have taken the amount had he not been an officer of the said company. Clearly, the taking was done with grave abuse of confidence.

Ferdinand likewise assails the testimony of prosecution witness Juanito, who retracted his affidavit of desistance in favor of the former and explained on the witness stand that he had agreed to execute the same due to personal favors bestowed on him by Ferdinand. Ferdinand asserts that Juanito's retraction should not be given credence. This contention is unconvincing. As aptly discussed by the Court of Appeals:

> [W]hile his desistance may cast doubt on his subsequent testimony, We are not unmindful that he was in fact grilled by the defense regarding his motives in revoking his earlier desistance and he remained steadfast in his testimony that [Ferdinand] was never authorized by Porta-Phone to collect payments and that during the meeting of 30 October 1996, [Ferdinand] refused to return the money. Rather than destroy his credibility, the defense's grilling regarding

[15] TSN, 23 September 1997, pp. 74-75.

the reasons for his filing his earlier desistance even strengthened the value of his testimony for he only executed the same because of some personal favors from [Ferdinand]. And while [Ferdinand] suggests that subsequent revocation of his desistance in open court may be due this time to favors extended by Porta-Phone cannot be sustained when taken together with the fact that [Juanito] was long been separted (sic) from Porta-Phone when he testified. In fact Porta-Phone's CEO did not even have kind words for [Juanito] when the former testified. x x x.[16]

In sum, this Court, yields to the factual findings of the trial court which were affirmed by the Court of Appeals, there being no compelling reason to veer away from the same. This is in line with the precept stating that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[17]

The RTC imposed on petitioner the indeterminate penalty of Ten (10) Years and One (1) Day of *prision mayor* as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal, as maximum. Under Article 310 of the Revised Penal Code, the penalty for Qualified Theft is two degrees higher than that specified in Article 309. Paragraph 1 of Article 309 provides that if the value of the thing stolen is more than ₱12,000.00 but does not exceed ₱22,000.00, the penalty shall be *prision mayor* in its minimum and medium periods. In this case, the amount stolen was ₱15,000.00. Two degrees higher than *prision mayor* minimum and medium is *reclusion temporal* in its medium and maximum periods. Applying the Indeterminate Sentence Law, the minimum shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of 10 years and 1 day to 14 years and 8 months. There being neither aggravating nor mitigating circumstance in the commission of the offense, the maximum period of the indeterminate sentence shall be within the range of 16 years, 5 months and 11 days to 18 years, 2

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[16] *Rollo*, pp. 210-211.

[17] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

months and 20 days. The minimum penalty imposed by the RTC is correct. However, the maximum period imposed by RTC should be increased to 16 years, 5 months and 11 days.

WHEREFORE, the Decision of the Court of Appeals dated 27 April 2006 in CA-G.R. CR No. 27661 finding Ferdinand A. Cruz **GUILTY** of the crime of Qualified Theft is hereby **AFFIRMED with MODIFICATION.** Ferdinand A. Cruz is hereby sentenced to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor*, as minimum, to 16 years, 5 months and 11 days of *reclusion temporal*, as maximum.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 177785. September 3, 2008]

RANDY ALMEDA, EDWIN M. AUDENCIAL, NOLIE D. RAMIREZ, ERNESTO M. CALICAGAN and REYNALDO M. CALICAGAN, *petitioners, vs.* **ASAHI GLASS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PERMISSIBLE JOB CONTRACTING OR SUBCONTRACTING; EXPLAINED. — Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be

performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: "(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof; (b) The contractor or subcontractor has substantial capital or investment; and (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits."

2. ID.; ID.; LABOR-ONLY CONTRACTING; ELEMENTS. — [L]abor-only contracting, a prohibited act, is an arrangement in which the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present: "a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal." In labor-only contracting, the statutes create an employer-employee relationship for a comprehensive purpose: to prevent circumvention of labor laws. The contractor is considered as merely the agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees are directly employed by the principal employer.

3. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; POWER OF CONTROL; REFERS MERELY TO THE EXISTENCE OF THE POWER AND NOT TO THE ACTUAL EXERCISE THEREOF. — The power of control refers to the authority of the employer to control the employee not only with regard to the result of work to be done, but also to the means and methods by which the work is to be accomplished.

> It should be borne in mind that the power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power.

APPEARANCES OF COUNSEL

Remigio D. Saladero, Jr. for petitioners.
Tan Acut & Lopez for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Randy Almeda, Edwin Audencial, Nolie Ramirez, Ernesto Calicagan and Reynaldo Calicagan, seeking to reverse and set aside the Decision[1] dated 10 November 2006 and the Resolution[2] dated 27 April 2007 of the Court of Appeals in CA-G.R. SP No. 93291. The appellate court reversed and set aside the Decision dated 29 June 2005 and Resolution dated 24 November 2005 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 039768-04 finding respondent Asahi Glass Philippines, Inc. jointly and severally liable with San Sebastian Allied Services, Inc. (SSASI) for illegal dismissal, and ordering both respondent and SSASI to reinstate petitioners to their former positions and to pay their backwages from 2 December 2002 up to the date of their actual reinstatement. Instead, the Court of Appeals reinstated the Decision dated 18 February 2004 of the Labor Arbiter dismissing petitioners' complaint for illegal dismissal against respondent and SSASI, but ordering the payment of separation benefits to petitioners.

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[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Magdangal M. De Leon and Ramon C. Garcia, concurring. *Rollo,* pp. 30-46.

[2] *Rollo,* p. 47.

The present Petition arose from a complaint for illegal dismissal with claims for moral and exemplary damages and attorney's fees filed by petitioners against respondent and SSASI.

In their Complaint[3] filed before the Labor Arbiter, petitioners alleged that respondent (a domestic corporation engaged in the business of glass manufacturing) and SSASI (a labor-only contractor) entered into a service contract on 5 March 2002 whereby the latter undertook to provide the former with the necessary manpower for its operations. Pursuant to such a contract, SSASI employed petitioners Randy Almeda, Edwin Audencial, Nolie Ramirez and Ernesto Calicagan as glass cutters, and petitioner Reynaldo Calicagan as Quality Controller,[4] all assigned to work for respondent. Petitioners worked for respondent for periods ranging from three to 11 years.[5] On 1 December 2002, respondent terminated its service contract with SSASI, which in turn, terminated the employment of petitioners on the same date. Believing that SSASI was a labor-only contractor, and having continuously worked as glass cutters and quality controllers for the respondent – functions which are directly related to its main line of business as glass manufacturer – for three to 11 years, petitioners asserted that they should be considered regular employees of the respondent; and that their dismissal from employment without the benefit of due process of law was unlawful. In support of their complaint, petitioners submitted a copy of their work schedule to show that they were under the direct control of the respondent which dictated the time and manner of performing their jobs.

Respondent, on the other hand, refuted petitioners' allegations that they were its regular employees. Instead, respondent claimed that petitioners were employees of SSASI and were merely assigned by SSASI to work for respondent to perform intermittent

[3] Filed on 9 December 2002 at the Labor Arbiter.

[4] There is nothing in the record that would show the exact date when the petitioners started working with the respondent.

[5] Petitioners Edwin Audencial and Randy Almeda worked for respondent for 11 years; petitioner Ernesto Calicagan for five years; and petitioners Reynaldo Calicagan and Ernesto Ramirez for three years. (*Rollo*, p. 171.)

services pursuant to an Accreditation Agreement, dated 5 March 2002, the validity of which was never assailed by the petitioners. Respondent contested petitioners' contention that they were performing functions that were directly related to respondent's main business since petitioners were simply tasked to do mirror cutting, an activity occasionally performed upon a customer's order. Respondent likewise denied exercising control over petitioners and asserted that such was wielded by SSASI. Finally, respondent maintained that SSASI was engaged in legitimate job contracting and was licensed by the Department of Labor and Employment (DOLE) to engage in such activity as shown in its Certificate of Registration.[6] Respondent presented before the Labor Arbiter copies of the Opinion dated 18 February 2003 of DOLE Secretary Patricia Sto. Tomas authorizing respondent to contract out certain activities not necessary or desirable to the business of the company; and the Opinion dated 10 July 2003 of DOLE Bureau of Labor Relations (DOLE-BLR) Director Hans Leo Cacdac allowing respondent to contract out even services that were not directly related to its main line of business.

SSASI, for its part, claimed that it was a duly registered independent contractor as evidenced by the Certificate of Registration issued by the DOLE on 3 January 2003. SSASI averred that it was the one who hired petitioners and assigned them to work for respondent on occasions that the latter's work force could not meet the demands of its customers. Eventually, however, respondent ceased to give job orders to SSASI, constraining the latter to terminate petitioners' employment.

On 18 February 2004, the Labor Arbiter promulgated his Decision[7] finding that respondent submitted overwhelming documentary evidence to refute the bare allegations of the petitioners and accordingly dismissing the complaint for lack of merit. However, he also ordered the payment of separation benefits to petitioners. The Labor Arbiter thus decreed:

WHEREFORE, premises considered, judgment is hereby rendered declaring that the instant case should be, as it is hereby DISMISSED

[6] CA *rollo,* p. 353.

[7] *Rollo,* pp. 120-139.

for lack of merit. However, the respondent San Sebastian Allied Services, Inc. is hereby ordered to pay the [herein petitioners] Edwin M. Audencial, Reynaldo Calicagan, Randy Almeda, Nolie D. Ramirez and Ernesto Calicagan their respective separation benefits in the following specified amounts:

(1) Edwin Audencial	₱ 41,327.00
(2) Reynaldo M. Calicagan	5,860.00
(3) Randy V. Almeda	45,084.00
(4) Nolie Ramirez	15,028.00
(5) Ernesto Calicagan	22,542.00

All other claims are dismissed.

On appeal, the NLRC reversed the afore-quoted Decision of the Labor Arbiter, giving more evidentiary weight to petitioners' testimonies. It appeared to the NLRC that SSASI was engaged in labor-only contracting since it did not have substantial capital and investment in the form of tools, equipment and machineries. The petitioners were recruited and assigned by SSASI to respondent as glass cutters, positions which were directly related to respondent's principal business of glass manufacturing. In light of the factual circumstances of the case, the NLRC declared that petitioners were employees of respondent and not of SSASI. Hence, the NLRC ruled in its Decision[8] dated 29 June 2005:

WHEREFORE, the decision appealed from is hereby VACATED and SET ASIDE. [Herein respondent] and [SSASI] are hereby ordered to: (1) reinstate the [herein petitioners] to their former position as glass cutters; and (2) pay [petitioners'] full backwages from December 2, 2002 up to the date of their actual reinstatement. The liability of [respondent] and [SSASI] for [petitioners'] backwages is further declared to be joint and several.

Only respondent moved for the reconsideration of the foregoing NLRC Decision. Respondent prayed that the NLRC vacate its previous finding that SSASI was a *labor-only* contractor and that it was guilty of the illegal dismissal of petitioners. In a

[8] *Id.* at 168-173.

Resolution[9] dated 24 November 2005, the NLRC denied the Motion for Reconsideration of respondent for lack of compelling justification to modify, alter or reverse its earlier Decision.

This prompted respondent to elevate its case to the Court of Appeals by the filing of a Petition for *Certiorari* with Application for the Issuance of Temporary Restraining Order (TRO),[10] alleging that the NLRC abused its discretion in ignoring the established facts and legal principles fully substantiated by the documentary evidence on record and legal opinions of labor officials, and in giving more credence to the empty allegations advanced by petitioners.

To prevent the execution of the Decision dated 25 June 2005 and Resolution dated 24 November 2005 of the NLRC, respondent included in its Petition a prayer for the issuance of a TRO, which it reiterated in a motion filed on 29 August 2006. Acting on respondent's motion, the Court of Appeals issued a TRO on 11 September 2006 enjoining the NLRC from enforcing its 25 June 2005 Decision and 24 November 2005 Resolution.[11]

On 10 November 2006, the Court of Appeals rendered a Decision granting respondent's Petition for *Certiorari* and reversing the NLRC Decision dated 25 June 2005. The appellate court found merit in respondent's argument that the NLRC gravely abused its discretion in not finding that there was a legitimate job contracting between respondent and SSASI. SSASI is a legitimate job contractor as proven by its Certificate of Registration issued by the DOLE. Respondent entered into a valid service contract with SSASI, by virtue of which petitioners were assigned by SSASI to work for respondent. The service contract itself, which was duly approved by the DOLE, defined the relationship between SSASI and petitioners as one of employer-employees. It was SSASI which exercised the power of control over petitioners. Petitioners were merely allowed to work at

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[9] *Id.* at 192-194.

[10] *Id.* at 295-328.

[11] The records do not show that respondent posted a bond before the TRO was issued by the Court of Appeals.

respondent's premises for reasons of efficiency. Moreover, it was SSASI, not respondent, who terminated petitioners' services. The *fallo* of the Decision of the Court of Appeals state:

> WHEREFORE, premises considered, the petition is GRANTED and [NLRC's] assailed 29 June 2005 Decision is, accordingly, REVERSED and SET ASIDE. In lieu thereof, the 18 February 2004 Decision rendered in the case by Labor Arbiter Francisco A. Robles is REINSTATED.[12]

The Court of Appeals denied petitioners' Motion for Reconsideration in a Resolution dated 27 April 2007.

Hence, petitioners come before this Court *via* the instant Petition for Review on *Certiorari* assailing the 10 November 2006 Decision and 27 April 2007 Resolution of the Court of Appeals based on the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE FINDING OF THE NLRC THAT RESPONDENT COMPANY IS ENGAGED IN LABOR-ONLY CONTRACTING.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE RULING OF THE NLRC THAT SAN SEBASTIAN ALLIED SERVICES, INC. IS MERELY RESPONDENT'S AGENT AND RESPONDENT IS PETITIONERS' REAL EMPLOYER.

III.

THE COURT OF APPEALS COMMITTED AN ERROR IN DISMISSING PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL.

It is apparent to this Court that the judicious resolution of the Petition at bar hinges on two elemental issues: (1) whether petitioners were employees of respondent; and (2) if they were, whether they were illegally dismissed.

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[12] *Rollo*, p. 45.

Respondent adamantly insists that petitioners were not its employees but those of SSASI, a legitimate job contractor duly licensed by the DOLE to undertake job contracting activities. The job performed by petitioners were not directly related to respondent's primary venture as flat glass manufacturer, for they were assigned to the mirroring line to perform glass cutting on occasions when the employees of respondent could not comply with the market's intermittent increased demand. And even if petitioners were working at respondent's premises, it was SSASI which effectively supervised the manner and method petitioners performed their jobs, except as to the result thereof.

The Court would only be able to deem petitioners as employees of respondent if it is established that SSASI was a labor-only contractor, and not a legitimate job contractor or subcontractor.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[13] A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor or subcontractor has substantial capital or investment; and

(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all

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[13] Section 4(d), Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code.

labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[14]

On the other hand, labor-only contracting, a prohibited act, is an arrangement in which the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.[15] In labor-only contracting, the following elements are present:

(a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;

(b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[16]

In labor-only contracting, the statutes create an employer-employee relationship for a comprehensive purpose: to prevent circumvention of labor laws. The contractor is considered as merely the agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees are directly employed by the principal employer.[17] Therefore, if SSASI was a labor-only contractor, then respondent shall be considered as the employer of petitioners who must bear the liability for the dismissal of the latter, if any.

An important element of legitimate job contracting is that the contractor has substantial capital or investment, which respondent failed to prove. There is a dearth of evidence to prove that SSASI possessed substantial capital or investment when respondent began contractual relations with it more than a decade before 2003. Respondent's bare allegations, without

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[14] *Id.*

[15] Section 4(d), Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code.

[16] *Id.*

[17] *Manaya v. Alabang Country Club, Inc.*, G.R. No. 168988, 19 June 2007, 525 SCRA 140, 159.

supporting proof that SSASI had substantial capital or investment, do not sway this Court. The Court did not find a single financial statement or record to attest to the economic status and financial capacity of SSASI to venture into and sustain its own business independent from petitioner.

Furthermore, the Court is unconvinced by respondent's argument that petitioners were performing jobs that were not directly related to respondent's main line of business. Respondent is engaged in glass manufacturing. One of the petitioners served as a quality controller, while the rest were glass cutters. The only excuse offered by respondent – that petitioners' services were required only when there was an increase in the market's demand with which respondent could not cope – only prove even more that the services rendered by petitioners were indeed part of the main business of respondent. It would mean that petitioners supplemented the regular workforce when the latter could not comply with the market's demand; necessarily, therefore, petitioners performed the same functions as the regular workforce. Even respondent's claim that petitioners' services were required only intermittently, depending on the market, deserves scant credit. The indispensability of petitioners' services was fortified by the length and continuity of their performance, lasting for periods ranging from three to 11 years.

More importantly, the Court finds that the crucial element of control over petitioners rested in respondent. The power of control refers to the authority of the employer to control the employee not only with regard to the result of work to be done, but also to the means and methods by which the work is to be accomplished. It should be borne in mind that the power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power.[18]

In the instant case, petitioners worked at the respondent's premises, and nowhere else. Petitioners followed the work schedule

[18] *Id.*

prepared by respondent. They were required to observe all rules and regulations of the respondent pertaining to, among other things, the quality of job performance, regularity of job output, and the manner and method of accomplishing the jobs. Obscurity hounds respondent's argument that even if petitioners were working under its roof, it was still SSASI which exercised control over the manner in which they accomplished their work. There was no showing that it was SSASI who established petitioners' working procedure and methods, or who supervised petitioners in their work, or who evaluated the same. Other than being the one who hired petitioners, there was absolute lack of evidence that SSASI exercised control over them or their work.

The fact that it was SSASI which dismissed petitioners from employment is irrelevant. It is hardly proof of control, since it was demonstrated only at the end of petitioners' employment. What is more, the dismissal of petitioners by SSASI was a mere result of the termination by respondent of its contractual relations with SSASI.

Despite respondent's disavowal of the existence of an employer-employee relationship between it and petitioners and its unyielding insistence that petitioners were employees of SSASI, the totality of the facts and the surrounding circumstances of the case convey otherwise. SSASI is a labor-only contractor; hence, it is considered as the agent of respondent. Respondent is deemed by law as the employer of petitioners. Surely, respondent cannot expect this Court to sustain its stance and accord full evidentiary weight to the documentary evidence belatedly procured in its vain attempt to evade liability as petitioners' employer.

The Certificate of Registration presented by respondent to buttress its position that SSASI is a duly registered job contractor is of little significance, considering that it were issued only on 3 January 2003. There is no further proof that prior to said date, SSASI had already registered with and had been recognized by the DOLE as a job contractor.

Verily, the Certificate of Registration of SSASI, instead of supporting respondent's case, only served to raise more doubts. The timing of the registration of SSASI is highly suspicious. It

is important to note that SSASI was already providing respondent with workers, including petitioners, long before SSASI was registered with the DOLE as a job contractor. Some of the petitioners were hired by SSASI and made to work for respondent for 11 years. Petitioners were also dismissed from service only a month prior to the issuance of the Certificate of Registration of SSASI. Neither respondent nor SSASI exerted any effort to explain the reason for the belated registration with the DOLE by SSASI as a purported job contractor. It may be safely discerned from the surrounding circumstances that the Certificate of Registration of SSASI was merely secured in order to blanket the previous relations between SSASI and respondent with legality.

Moreover, the Certificate of Registration issued by the DOLE recognized that SSASI was a legitimate job contractor only as of the date of its issuance, 3 January 2003. There is no basis whatsoever to give the said Certificate any retroactive effect. The Certificate can only be used as reference by persons who would consider the services offered by SSASI subsequent to its issuance. Respondent, who entered into contractual relations with SSASI way before the said Certificate, cannot claim that it relied thereon.

Hence, the status of SSASI as a job contractor previous to its registration with the DOLE on 3 January 2003 is still refutable. It can only be determined upon an evaluation of its activities as contractor prior to the issuance of its Certificate of Registration.

For the same reasons, this Court cannot give much weight to the Opinions dated 18 February 2003 and 10 July 2003 of DOLE Secretary Sto. Tomas and DOLE-BLR Director Cacdac, respectively, allowing respondent to contract out certain services. The said Opinions were noticeably issued only after the hiring and termination of petitioners. And, although the Opinions allow respondent to contract out certain services, they do not necessarily prove that the services respondent contracted to SSASI were actually among those it was allowed to contract out; or that SSASI was a legitimate job contractor, thus, relieving respondent of any liability for the dismissal of petitioners by SSASI.

Equally unavailing is respondent's stance that its relationship with petitioners should be governed by the Accreditation Agreement stipulating that petitioners were to remain employees of SSASI and shall not become regular employees of the respondent. To permit respondent to disguise the true nature of its transactions with SSASI by the terms of its contract, for the purpose of evading its liabilities under the law, would seriously impair the administration of justice. A party cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, *i.e.*, whether as labor-only contractor or as job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute.[19]

Having established that respondent was petitioners' employer, the Court now proceeds to determining whether petitioners were dismissed in accordance with law.

Article 280 of the Labor Code, as amended, reads –

ART. 280. *Regular and Casual Employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if its is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

This Court expounded on the afore-quoted provision, thus –

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular

[19] *San Miguel Corporation v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 423.

activity performed by the employee in relation to the usual business or trade of the employer. x x x The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[20]

In the instant Petition, the Court has already declared that petitioners' employment as quality controllers and glass cutters are directly related to the usual business or trade of respondent as a glass manufacturer. Respondent would have wanted this Court to believe that petitioners' employment was dependent on the increased market demand. However, bearing in mind that petitioners have worked for respondent for not less than three years and as much as 11 years, which respondent did not refute, then petitioners'continued employment clearly demonstrates its continuing necessity and indispensability to the business of respondent, raising their employment to regular status. Thus, having gained regular status, petitioners were entitled to security of tenure and could only be dismissed on just or authorized causes and after they had been accorded due process.[21]

As petitioners' employer, respondent has the burden of proving that the dismissal was for a cause allowed under the law, and that they were afforded procedural due process.[22] However, respondent failed to discharge this burden with substantial evidence as it noticeably narrowed its defense to the denial of any employer-employee relationship between it and petitioners.

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[20] *De Leon v. National Labor Relations Commission*, G.R. No. 70705, 21 August 1989, 176 SCRA 615, 621.

[21] *DOLE Philippines v. Esteva*, G.R. No. 161115, 30 November 2006, 509 SCRA 332, 381.

[22] *Solidbank Corporation (now Metrobank) v. Court of Appeals*, 456 Phil. 879, 886 (2003).

The sole reason given for the dismissal of petitioners by SSASI was the termination of its service contract with respondent. But since SSASI was a labor-only contractor, and petitioners were to be deemed the employees of respondent, then the said reason would not constitute a just or authorized cause[23] for petitioners' dismissal. It would then appear that

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[23] Art. 282. *Termination by employer*. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Art. 283. *Closure of establishment and reduction of personnel*. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of the establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Art. 284. *Disease as ground for termination*. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six months being considered as one (1) whole year.

petitioners were summarily dismissed based on the afore-cited reason, without compliance with the procedural due process for notice and hearing.

Herein petitioners, having been unjustly dismissed from work, are entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement.[24] Their earnings elsewhere during the periods of their illegal dismissal shall not be deducted therefrom.[25]

WHEREFORE, premises considered, the instant Petition is **GRANTED.** The Decision dated 10 November 2006 and Resolution dated 27 April 2007 of the Court of Appeals in CA-G.R. SP No. 93291 are **REVERSED** and **SET ASIDE.** The Decision dated 29 June 2005 of the National Labor Relations Commission in NLRC-NCR CA No. 039768-04 is thereby **REINSTATED.** Let the records of this case be remanded to the Computation and Examination Unit of the NLRC for the proper computation of subject money claims as above-discussed. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[24] Article 279, Labor Code of the Philippines.

[25] *Bustamante v. National Labor Relations Commission*, 332 Phil. 833, 842-843 (1996).

THIRD DIVISION

[G.R. No. 181546. September 3, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO ALUNDAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST *IN FLAGRANTE DELICTO*; ELUCIDATED. — Section 5, Rule 113 of the Rules of Court provides: Sec. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; x x x Section 5(a) provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit, an offense. Section 5 (a) refers to arrest *in flagrante delicto*. *In flagrante delicto* means caught in the act of committing a crime. This rule, which warrants the arrest of a person without warrant, requires that the person arrested has just committed a crime, or is committing it, or is about to commit an offense, in the presence or within view of the arresting officer. x x x In *People v. Sucro* we held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Section 5, par. (a), Rule 113 of the Rules of Court as the offense is deemed committed in his presence or within his view. In essence, Section 5, par. (a), Rule 113, requires that the accused be caught *in flagrante delicto* or caught in the act of committing a crime.

2. ID.; ID.; ID.; OBJECTION INVOLVING A WARRANT OF ARREST OR THE PROCEDURE FOR THE ACQUISITION BY THE COURT OF JURISDICTION OVER THE PERSON OF THE ACCUSED MUST BE MADE BEFORE HE ENTERS HIS PLEA.— The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must

be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES INVOLVING ILLEGAL DRUGS, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS; EXPLAINED. — [I]n cases involving illegal drugs, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved and their testimony, therefore, is entitled to full faith and credit. In this case, the records are bereft of any indication which even remotely suggests ill motive on the part of the police officers.

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.*:

Before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01164 dated 9 October 2007 which affirmed

[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr., concurring. *Rollo*, pp. 2-14.

the Decision of the Regional Trial Court (RTC) of Bontoc, Mountain Province, Branch 35, in Criminal Case No. 1528, finding accused-appellant Ricardo Alunday guilty of violation of Section 9, Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972."

On 7 August 2000, two informations were filed against accused-appellant before the RTC of Bontoc, Mountain Province, for violating the provisions of Section 9 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972,[2] and Section 1 of Presidential Decree No. 1866.

In Criminal Case No. 1528, accused-appellant was charged with violation of Section 9 of Republic Act No. 6425, committed in the following manner:

> That on or about August 3, 2000, in the morning thereof at a marijuana plantation with an area of TEN (10) hectares, more or less, and which form part of the public domain at Mount Churyon, Betwagan, Sadanga, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, and with intent to plant and cultivate, did then and there willfully, unlawfully and feloniously plant, cultivate and culture marijuana fruiting tops weighing more than 750 grams, with an estimated value of TEN MILLION (₱10,000,000.00) Pesos, Philippine Currency, knowing fully well that the same is a prohibited drug or from which a dangerous drug maybe manufactured or derived.[3]

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[2] SEC. 9. *Cultivation of Plants which are Sources of Prohibited Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall plant, cultivate or culture on any medium Indian hemp, opium poppy (*papaver somniferum*) or any other plant which is or may hereafter be classified as dangerous drug or from which any dangerous drug may be manufactured or derived.

The land or portions thereof, and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated to the State, unless the owner thereof can prove that he did not know of such cultivation or culture despite the exercise of due diligence on his part.

If the land involved is part of the public domain, the maximum of the penalties herein provided shall be imposed upon the offender.

[3] Records, Vol. I, p. 1.

On the other hand, in Criminal Case No. 1529, accused-appellant was additionally charged with violation of Section 1 of Presidential Decree No. 1866,[4] committed as follows:

That on or about August 3, 2000, in the morning therof at a marijuana plantation situated at Mount Churyon, Betwagan, Sadanga, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, without any license or permit thereof, did then and there willfully, unlawfully and feloniously have in his possession an M16 Rifle, a high powered firearm, bearing Serial No. 108639, with engraved marks of "COREY BOKZ" on the left side of the gun butt and six (6) letter "x" on the handgrip which he carried outside his residence without any written authority or permit previously acquired from the authorities to carry or transport the same.[5]

On 22 November 2000, accused-appellant assisted by a counsel *de oficio* pleaded not guilty[6] to both charges. Thereafter, a joint trial ensued.

During the trial, the prosecution presented the following witnesses: (a) Senior Police Officer (SPO) 1 George Saipen; (b) SPO1 Felix Angitag; (c) Police Officer (PO) 2 Joseph Aspilan; (d) Police Senior Inspector Andrew Cayad, Chief, Intelligence Section, Police Provincial Office, Mountain Province; (e) PO2 Roland Ateo-an; (f) Edward Sacgaca, Philippine Information Agency; (g) SPO1 Celestino Victor Matias; and (h) Emilia Gracia Montes, Forensic Analyst, Philippine National Police (PNP), Crime Laboratory, Camp MBAdo Dangwa, La Trinidad, Benguet.

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[4] SEC. 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition*.- The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition; *Provided*, That no other crime was committed.

[5] Records, Vol. II, p. 1.

[6] Records, Vol. I, p. 27; Vol. II, p. 28.

The defense, on the other hand, presented accused-appellant Ricardo Alunday, Wayto Alunday and Linda Dalasnac, aunt and daughter respectively, of accused-appellant.

The prosecution's version of the case is as follows:

Sometime in May 2000, the Intelligence Section of the Police Provincial Office of Mountain Province received a report from a confidential informant of an existing marijuana plantation within the vicinity of Mount Churyon, Sadanga, Mountain Province. Acting on the confidential information, Chief of the Intelligence Section of Mountain Province, Police Senior Inspector Andrew Cayad (Cayad), engaged the services of another confidential informant to validate said report. After a series of validations, the confidential informant confirmed the existence of the subject plantation.[7]

Cayad reported the matter to the Provincial Director, who immediately directed Cayad to lead a 70-men police contingent to make an operation plan. A joint operation from the whole Mountain Province Police Force was formed.[8] The police operation was termed Operation Banana.

On 2 August 2000, a contingent composed of policemen from Bauko, Sabangan, Tadian, Sadanga, Provincial Headquarters and Bontoc Municipal Headquarters proceeded to Mount Churyon. Edward Sacgaca of the Philippine Information Agency (PIA) was invited to videotape the operation.[9] The team left Bontoc for Betwagan, Sadanga, in the afternoon of 2 August 2000.[10] They reached Betwagan at about 6 o'clock in the afternoon and slept there up to midnight. Thereafter, they proceeded to Mount Churyon where they arrived at around 6 o'clock in the morning of the following day or on 3 August 2000.[11] A group of policemen, one of whom was SPO1 George Saipen (Saipen)

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[7] TSN, 6 March 2001, pp. 4-5, 17.

[8] *Id.* at 5.

[9] *Id.* at 8, 15.

[10] TSN, 18 January 2000, p. 5.

[11] *Id.* at 6.

of the Bontoc PNP, was dispatched to scout the area ahead of the others, while the rest stayed behind as back-up security. At a distance of 30 meters, Saipen, together with the members of his group, saw Ricardo Alunday (Alunday) herein accused-appellant, cutting and gathering marijuana plants. SPO1 Saipen and others approached Alunday and introduced themselves as members of the PNP.[12] SPO1 Saipen, together with the other policemen, brought said accused-appellant to a nearby hut.

Inside the hut, the operatives saw an old woman, an M16 rifle and some dried marijuana leaves. The other members of the raiding team uprooted and thereafter burned the marijuana plants, while the team from the Provincial Headquarters got some samples of the marijuana plants and brought the same to their headquarters. The samples were turned over by Police Superintendent Rodolfo Anagaran to the PNP Crime Laboratory for examination. Emilia Gracia Montes, Forensic Analyst, PNP Crime Laboratory, Camp MBAdo Dangwa, La Trinidad, Benguet, received 17 pieces of fully grown suspected marijuana plants for laboratory examination and analyses. She tested the subject specimens and found all to be positive for marijuana.[13]

Accused-appellant presented a disparate narration of the incident.

He vehemently denied the accusations. He maintained that on 2 August 2000, he went to Mount Churyon to haul the lumber that he had cut and left by the river. He spent the night at the hut of an old woman named Ligka Baydon.

At around 6:00 o'clock in the morning of the following day or on 3 August 2000, he went out of the hut to search for squash to cook for breakfast. A group of policemen suddenly came. Two of them approached him and asked if he owned the marijuana plants growing around the premises and the land on which these were planted. He answered in the negative and further stated that he did not even know how a marijuana plant looked like. The policemen then proceeded to uproot and burn

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

[13] TSN, 22 August 2001, p. 6.

the supposed marijuana plants. Subsequently, the policemen took him with them to the PNP Headquarters in Bontoc despite his refusal to go with them.

Wayto Alunday and Linda Dalasnac, the aunt and daughter of Ricardo Alunday, respectively, corroborated the latter's testimony that he was indeed at Mount Churyon on 3 August 2000 to get some lumber.[14]

After trial, the court *a quo* found accused-appellant guilty in Crim. Case No. 1528 but was acquitted in Crim. Case No. 1529. The dispositive portion of the trial court's Decision, dated 8 May 2003 reads:

> WHEREFORE, a Joint Judgment is hereby rendered-
>
> 1. Sentencing Ricardo Alunday *alias* "Kayad" in Criminal Case 1528, to suffer the penalty of *reclusion perpetua* and to pay a fine of Five Hundred Thousand Pesos-the land involved in the commission of the offense not having been shown to be part of the public domain; and
>
> 2. Acquitting the above-named accused in Criminal Case 1529 on reasonable doubt.[15]

From the decision of conviction, accused-appellant filed a Notice of Appeal.[16]

On 11 November 2004, accused-appellant filed an appellant's brief[17] before the Supreme Court. On 4 March 2005, the Office of the Solicitor General filed the People's Brief.[18]

Since the penalty imposed by the trial court was *reclusion perpetua*, the case was remanded to the Court of Appeals for appropriate action and disposition pursuant to our ruling in *People v. Mateo.*[19]

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[14] TSN, 19 September 2002, p. 5; TSN, 11 December 2002, p. 4.

[15] Records, Vol. I, p. 234.

[16] *Id.* at 236.

[17] CA *rollo*, pp. 55-67.

[18] *Id.* at 81-95.

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

On 9 October 2007, the Court of Appeals affirmed the findings and conclusion of the RTC, the *fallo* of which reads:

WHEREFORE, the assailed Decision dated 8 May 2003 of the Regional Trial Court, First Judicial Region, Branch 35, Bontoc, Mountain Province is hereby AFFIRMED.[20]

Accused-appellant filed a Notice of Appeal[21] on 5 November 2007. Thus, the Court of Appeals forwarded the records of the case to us for further review.

In our Resolution[22] dated 19 March 2008, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. People[23] opted not to file a supplemental brief on the ground that it had exhaustively argued all the relevant issues in its brief, and the filing of a supplemental brief would only entail a repetition of the arguments already discussed therein. Accused-appellant submitted his supplemental brief on 12 June 2008.

In the beginning, accused-appellant raised a lone error, thus:

THE COURT *A QUO* ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[24]

Later, in his supplemental brief dated 11 June 2008, he added another alleged error, thus:

THE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE ITS INADMISSIBILITY FOR BEING THE RESULT OF AN UNLAWFUL ARREST.[25]

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[20] *Rollo,* p. 11.

[21] *Id.* at 12.

[22] *Id.* at 18.

[23] *Id.* at 16.

[24] CA *rollo,* p. 57.

[25] *Rollo,* p. 22.

As regards the guilt of accused-appellant, we find the expostulations of the Court of Appeals worth reiterating:

It is jurisprudential that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.

We have carefully scrutinized the record and found no cogent reason to depart from this rule.

x x x x x x x x x

Indeed, in the case at bench, the prosecution was able to establish the following with conviction:

(1) On 3 August 2000, a police continent raided a marijuana plantation located in Mount Churyon, Sadanga, Mountain Province.

(2) In the course thereof, appellant was seen cutting and gathering marijuana plants from the premises.

(3) There were no other plants except marijuana which were growing in the said area.

(4) There was a hut apparently used by appellant and an old woman as a camp or temporary dwelling which existed alone within the area of the subject plantation.

(5) The samples taken from the said plantation were all found to be positive for marijuana.

On the face of these positive testimonies of the prosecution witnesses, appellant's bare denials must necessarily fail. Moreover, it is interesting to note that appellant never mentioned his aunt, Wayto Alunday, in his testimony. In fact, she contradicted appellant's testimony when she said that he ate and slept in her hut. This only bolsters the conclusion that Wayto Alunday was not present when appellant was captured by the police.[26]

[26] *Id.* at 7-9.

Needless to state, the defense of denial cannot prevail over the positive identification of the accused.[27]

Contrarily, we find accused-appellant's posturings tenuous. Again, we cannot deviate from the Court of Appeals' valid observation:

> Aside from appellant's preposterous claim that he was looking for squash in the subject area where only marijuana plants were planted, he did not advance any explanation for his presence thereat. Besides, prosecution witness Saipen categorically stated that he caught appellant red-handed harvesting marijuana plants. Thus, We find it facetious that appellant did not even know what a marijuana plant looked like.
>
> Appellant asserts that the plantation in question was maintained by the Cordillera People's Liberation Army which witness Cayad confirmed likewise. Thus, appellant theorizes that he could not have been the perpetrator of the crime charged.
>
> We find appellant's assertion specious. A perusal of Section 9, Art. II of R.A. No. 6425 shows that a violation exists when a person shall cultivate, plant or culture on any medium Indian hemp, opium poppy (*papaver somniferum*) or any other plant which may hereafter be classified as dangerous drug. Indeed, ownership of the land where the marijuana seedlings are planted, cultivated and cultured is not a requisite of the offense.[28]

Accused-appellant further assails his conviction for being improper and illegal asserting that the court *a quo* never acquired jurisdiction over his person because he was arrested without a warrant and that his warrantless arrest was not done under any of the circumstances enumerated in Section 5, Rule 113 of the 1985 Rules of Court. He insists that the arresting officers had three months within which to secure a warrant from the time they received the information about an existing marijuana plantation in Mount Churyon, Sadanga, in May 2000, until they effected accused-appellant's arrest on 3 August 2000. Also, accused maintains that the arresting officers' failure to secure a warrant can never be justified by the urgency of the situation.

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[27] *Zanoria v. Court of Appeals*, 347 Phil. 538, 546 (1997).

[28] *Rollo*, p. 10.

Accused-appellant's claim of irregularity in his arrest is, at the most, limp.

Section 5, Rule 113 of the Rules of Court provides:

> Sec. 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5(a) provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit, an offense. Section 5(a) refers to arrest *in flagrante delicto*.[29] *In flagrante delicto* means caught in the act of committing a crime. This rule, which warrants the arrest of a person without warrant, requires that the person arrested has just committed a crime, or is committing it, or is about to commit an offense, in the presence or within view of the arresting officer.[30]

It must be recalled that the Intelligence Section of the Provincial Office of the Mountain Province received the information sometime in May 2000, and accused-appellant was arrested by SPO1 Saipen during the police raid at the plantation at Mount Churyon, Sadanga, only on 3 August 2000. This is so because the arrest was effected only after a series of validations[31] conducted by the team to verify or confirm the report that

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[29] *People v. Doria*, 361 Phil. 595, 627 (1999).

[30] *People v. Burgos*, 228 Phil. 1, 15 (1986); *People v. Pablo*, G.R. No. 105326, 28 December 1994, 239 SCRA 500, 505.

[31] TSN, 6 March 2001, p. 17.

indeed a marijuana plantation existed at the area and after an operation plan was formed. As admitted by the accused in his supplemental brief, the information about the existing marijuana plantation was **finally confirmed only on 2 August 2000**.[32] On 3 August 2000, the arresting team of SPO1 Saipen proceeded to the marijuana plantation. SPO1 Saipen saw accused-appellant personally cutting and gathering marijuana plants. Thus, accused-appellant's arrest on 3 August 2000 was legal, because he was caught *in flagrante delicto;* that is, the persons arrested were committing a crime in the presence of the arresting officers.[33]

In *People v. Sucro*[34] we held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Section 5, par. (a), Rule 113 of the Rules of Court as the offense is deemed committed in his presence or within his view. In essence, Section 5, par. (a), Rule 113, requires that the accused be caught *in flagrante delicto* or caught in the act of committing a crime.

SPO1 George Saipen testified on direct examination, thus:

Q. When you reached that Mount Churyon at about 6:00 o'clock in the morning of August 3, 2000, what did you see there Mr. Witness, if any?

A. **We were able to see a man cutting plants which we came to know as marijuana plants.**

Q. You said we, who were you (sic) companions when you saw a man cutting marijuana?

A. The Bontoc Operatives.

Q. All of you?

A. Yes, sir.

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[32] *Rollo,* p. 33.

[33] *Teodosio v. Court of Appeals,* G.R. No. 124346, 8 June 2004, 431 SCRA 194, 207-208.

[34] G.R. No. 93239, 18 March 1991, 195 SCRA 388.

Q. You mentioned a while back about marijuana plantation, will you describe to us why you say that [it] is a marijuana plantation?

A. That is marijuana plantation because I think, more or less four (4) hectares were planted with marijuana plants.

Q. And how tall were these marijuana plants in that marijuana plantation Mr. Witness?

A. Some are fully grown around 4 to 5 feet while some are still young about 2 feet while some are still seedling.

Q. And you said that you saw a man gathering marijuana plants, how far were you when you saw this man? Could you give us an estimate?

A. From this witness stand up to there.

COURT:

You stipulate counsel.

PROS. DOMINGUEZ:

About 30 meters, Your Honor.

PROS. DOMINGUEZ:

And how was the terrain of that Mount Churyon, is it flat?

A. Where the plantation is located it is somewhat slope and a little bit flat.

Q. You mean rolling hills?

A. Yes, sir.

Q. What did you do when you saw a man cutting or gathering marijuana plants?

A. Upon seeing that man cutting marijuana plants, I cautioned my companions at my back telling them that there is a man down cutting marijuana which prompted them to move; that others proceeded to the camp while me and my one companion went to the man and cautioned him not to make unnecessary movements.[35]

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[35] TSN, 18 January 2001, pp. 6-8.

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[36] We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment.[37] And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court.[38] We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

Herein, accused-appellant went into arraignment and entered a plea of not guilty. Thereafter, he actively participated in his trial. He raised the additional issue of irregularity of his arrest only during his appeal to this Court. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court by his counsel-assisted plea during his arraignment; by his actively participating in the trial and by not raising the objection before his arraignment.

It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.[39]

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[36] *People v. Tidula*, 354 Phil. 609, 624 (1998); *People v. Montilla*, 349 Phil. 640, 661 (1998); *People v. Cabiles*, G.R. No. 112035, 16 January 1998, 284 SCRA 199, 210; *People v. Mahusay*, 346 Phil. 762, 769 (1997); *People v. Rivera*, 315 Phil. 454, 465 (1995); *People v. Lopez, Jr.*, 315 Phil. 59, 71-72 (1995).

[37] *People v. Hernandez*, 347 Phil. 56, 74-75 (1997).

[38] *People v. Nazareno*, 329 Phil. 16, 22 (1996).

[39] *People v. Emoy*, 395 Phil. 371, 384 (2000).

Accused-appellant was not even denied due process by virtue of his alleged illegal arrest, because of his voluntary submission to the jurisdiction of the trial court, as manifested by the voluntary and counsel-assisted plea he entered during arraignment and by his active participation in the trial thereafter.[40]

In challenging the existence of a legitimate buy-bust operation, appellant casts questionable, if not improper, motive on the part of the police officers. Unfortunately for appellant, jurisprudence instructs us that in cases involving illegal drugs, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[41] Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved and their testimony, therefore, is entitled to full faith and credit.[42] In this case, the records are bereft of any indication which even remotely suggests ill motive on the part of the police officers. The following observations of the trial court are, indeed, appropriate, thus:

> Absent as it is in the record indications of personal interest or improper motive on their part to testify against the accused, the witnesses for the prosecution being government law enforcers and/or officials, actually present during the incident in question in the performance of their duties, are trustworthy sources. And the recollections in open court of such witnesses of the events that transpired on the occasion, given in clear and direct manner, corroborating and complimenting each other on material points, and highly probable in the natural order of things, are easy to believe and thus accorded full credence.
>
> In contrast, the accused himself, his aunt, and his daughter who testified in behalf of the former are obviously biased and unreliable witnesses on account of self-interest and blood kinship. Situated as they are, their inclination to be truthful is highly suspect. And quite

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[40] *People v. Navarro*, 357 Phil. 1010, 1032-1033 (1998).

[41] *People v. Bongalon*, 425 Phil. 96, 114 (2002).

[42] *People v. Pacis*, 434 Phil. 148, 159 (2002).

aside from being self-serving and dubious, their testimonies are inconsistent, and manifestly concocted or improbable to be seriously considered.[43]

All told, the cultivation of marijuana fruiting tops by accused-appellant having been established beyond reasonable doubt, we are constrained to uphold appellant's conviction. The penalty imposed by the RTC, as affirmed by the Court of Appeals, being in accord with law, is likewise affirmed.

WHEREFORE, premises considered, the Decision dated 9 October 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01164, affirming *in toto* the Decision of the Regional Trial Court, First Judicial Region, Branch 35, Bontoc, Mountain Province, in Criminal Case No. 1528, is hereby *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

EN BANC

[G.R. No. 180643. September 04, 2008]

ROMULO L. NERI, *petitioner, vs.* **SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS, SENATE COMMITTEE ON TRADE AND COMMERCE, and SENATE COMMITTEE ON NATIONAL DEFENSE AND SECURITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; EXECUTIVE PRIVILEGE; PRESIDENTIAL COMMUNICATIONS PRIVILEGE;

[43] Records, Vol. I, p. 232.

ROOTED IN THE SEPARATION OF POWERS UNDER THE CONSTITUTION.— The Court, in the earlier case of *Almonte v. Vasquez,* affirmed that the **presidential communications privilege** is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution. Even *Senate v. Ermita* x x x reiterated this concept. There, the Court enumerated the cases in which the claim of executive privilege was recognized, among them *Almonte v. Chavez, Chavez v. Presidential Commission on Good Government* (PCGG), and *Chavez v. PEA*. The Court articulated in these cases that "there are certain types of information which the government may withhold from the public," that there is a "governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters"; and that **"the right to information does not extend to matters recognized as 'privileged information' under the separation of powers, by which the Court meant Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings."**

2. ID.; ID.; ID.; ID.; THE POWER TO ENTER INTO AN EXECUTIVE AGREEMENT IS IN ESSENCE AN EXECUTIVE POWER. — The fact that a power is subject to the concurrence of another entity does not make such power less executive. "Quintessential" is defined as the most perfect embodiment of something, the concentrated essence of substance. On the other hand, "non-delegable" means that a power or duty cannot be delegated to another or, even if delegated, the responsibility remains with the obligor. The power to enter into an executive agreement is in essence an executive power. This authority of the President to enter into *executive agreements* without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence. Now, the fact that the President has to secure the prior concurrence of the Monetary Board, which shall submit to Congress a complete report of its decision before contracting or guaranteeing foreign loans, does not diminish the executive nature of the power.

3. ID.; ID.; ID.; ID.; EXECUTIVE PRIVILEGE; PRESIDENTIAL COMMUNICATIONS PRIVILEGE; LIMITED BY THE DOCTRINE OF OPERATIONAL PROXIMITY. — It must be

stressed that the doctrine of "operational proximity" was laid down in In *re: Sealed Case* precisely to limit the scope of the presidential communications privilege. The U.S. court was aware of the dangers that a limitless extension of the privilege risks and, therefore, carefully cabined its reach by explicitly confining it to White House staff, and not to staffs of the agencies, and then only to White House staff that has "operational proximity" to direct presidential decision-making, thus: "We are aware that such an extension, unless carefully circumscribed to accomplish the purposes of the privilege, could pose a significant risk of expanding to a large swath of the executive branch a privilege that is bottomed on a recognition of the unique role of the President. In order to limit this risk, the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President's decision-making process is adequately protected. **Not every person who plays a role in the development of presidential advice, no matter how remote and removed from the President, can qualify for the privilege. In particular, the privilege should not extend to staff outside the White House in executive branch agencies.** Instead, the privilege should apply only to communications authored or solicited and received by those members of an immediate White House advisor's staff who have broad and significant responsibility for investigation and formulating the advice to be given the President on the particular matter to which the communications relate. **Only communications at that level are close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers. See AAPS, 997 F.2d at 910 (it is "operational proximity" to the President that matters in determining whether "[t]he President's confidentiality interests" is implicated)."**

4. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — In the case at bar, the danger of expanding the privilege "to a large swath of the executive branch" (a fear apparently entertained by respondents) is absent because the official involved here is a member of the Cabinet, thus, properly within the term "advisor" of the President; in fact, her alter ego and a member of her official family. Nevertheless, in circumstances in which the official involved is far too remote, this Court also mentioned in the Decision the **organizational test** laid down in *Judicial*

Watch, Inc. v. Department of Justice. This goes to show that the operational proximity test used in the Decision is not considered conclusive in every case. In determining which test to use, the main consideration is to limit the availability of executive privilege only to officials who stand proximate to the President, not only by reason of their function, but also by reason of their positions in the Executive's organizational structure. Thus, respondent Committees' fear that the scope of the privilege would be unnecessarily expanded with the use of the operational proximity test is unfounded.

5. ID.; ID.; ID.; BILL OF RIGHTS; RIGHT TO INFORMATION; RESTRICTIONS. — In *Chavez v. Presidential Commission on Good Government*, it was stated that there are no specific laws prescribing the exact limitations within which the right may be exercised or the correlative state duty may be obliged. Nonetheless, it enumerated the recognized restrictions to such rights, among them: **(1)** national security matters, **(2)** trade secrets and banking transactions, **(3)** criminal matters, and **(4)** other confidential information. National security matters include state secrets regarding military and diplomatic matters, as well as information on inter-government exchanges prior to the conclusion of treaties and executive agreements. **It was further held that even where there is no need to protect such state secrets, they must be "examined in strict confidence and given scrupulous protection."**

6. ID.; ID.; ID.; RIGHT OF A SENATE COMMITTEE TO OBTAIN INFORMATION IN AID OF LEGISLATION AND PEOPLE'S RIGHT TO PUBLIC INFORMATION, DISTINGUISHED. — As laid down in *Senate v. Ermita*, "the demand of a citizen for the production of documents pursuant to his right to information does not have the same obligatory force as a *subpoena duces tecum* issued by Congress" and "neither does the right to information grant a citizen the power to exact testimony from government officials." x x x [T]hese rights belong to Congress, not to the individual citizen.

7. ID.; ID.; ID.; EXECUTIVE DEPARTMENT; EXECUTIVE PRIVILEGE; SUBJECT TO BALANCING AGAINST OTHER INTERESTS. — In *U.S. v. Nixon*, the U.S. Court held that executive privilege is subject to balancing against other interests and it is necessary to resolve the competing

interests in a manner that would preserve the essential functions of each branch. There, the Court weighed between presidential privilege and the legitimate claims of the judicial process. In giving more weight to the latter, the Court ruled that the President's generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial. The Nixon Court ruled that an absolute and unqualified privilege would stand in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions.

8. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; LEGISLATIVE INQUIRY IN AID OF LEGISLATION; NATURE. — *Senate Select Committee on Presidential Campaign Activities v. Nixon* expounded on the nature of a legislative inquiry in aid of legislation in this wise: "The sufficiency of the Committee's showing of need has come to depend, therefore, entirely on whether the subpoenaed materials are critical to the performance of its legislative functions. There is a clear difference between Congress' legislative tasks and the responsibility of a grand jury, or any institution engaged in like functions. **While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events;** Congress frequently legislates on the basis of conflicting information provided in its hearings. In contrast, the responsibility of the grand jury turns entirely on its ability to determine whether there is probable cause to believe that certain named individuals did or did not commit specific crimes. If, for example, as in *Nixon v. Sirica*, one of those crimes is perjury concerning the content of certain conversations, the grand jury's need for the most precise evidence, the exact text of oral statements recorded in their original form, is undeniable. **We see no comparable need in the legislative process, at least not in the circumstances of this case.** Indeed, whatever force there might once have been in the Committee's argument that the subpoenaed materials are necessary to its legislative judgments has been substantially undermined by subsequent events." Clearly, the need for hard facts in crafting legislation cannot be equated with the compelling or demonstratively critical and specific need for facts which is so essential to the judicial power to adjudicate actual controversies.

9. ID.; ID.; ID.; ID.; CURBING GRAFT AND CORRUPTION IS MERELY AN OVERSIGHT FUNCTION OF CONGRESS. — [C]urbing graft and corruption is merely an oversight function of Congress. x x x While it may be a worthy endeavor to investigate the potential culpability of high government officials, including the President, in a given government transaction, it is simply not a task for the Senate to perform. The role of the Legislature is to make laws, not to determine anyone's guilt of a crime or wrongdoing. Our Constitution has not bestowed upon the Legislature the latter role. Just as the Judiciary cannot legislate, neither can the Legislature adjudicate or prosecute. x x x The determination of who is/are liable for a crime or illegal activity, the investigation of the role played by each official, the determination of who should be haled to court for prosecution and the task of coming up with conclusions and finding of facts regarding anomalies, especially the determination of criminal guilt, are not functions of the Senate. Congress is neither a law enforcement nor a trial agency. Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, *i.e.*, legislation. Investigations conducted solely to gather incriminatory evidence and "punish" those investigated are indefensible. There is no Congressional power to expose for the sake of exposure. In this regard, the pronouncement in *Barenblatt v. United States* is instructive, thus: "**Broad as it is, the power is not, however, without limitations.** Since Congress may only investigate into the areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive."

10. ID.; ID.; ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; FUNCTION. — Under our Constitution, it is the Ombudsman who has the duty **"to investigate any act or omission of any public official, employee, office or agency when such act or omission appears to be illegal, unjust, improper, or inefficient."** The Office of the Ombudsman is the body properly equipped by the Constitution and our laws

to preliminarily determine whether or not the allegations of anomaly are true and who are liable therefor. The same holds true for our courts upon which the Constitution reposes the duty to determine criminal guilt with finality. Indeed, the rules of procedure in the Office of the Ombudsman and the courts are **well-defined and ensure that the constitutionally guaranteed rights of all persons, parties and witnesses alike, are protected and safeguarded.**

11. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; LEGISLATIVE INQUIRIES; NOT SUBJECT TO THE EXACTING STANDARDS OF EVIDENCE ESSENTIAL TO ARRIVE AT ACCURATE FACTUAL FINDINGS. — Legislative inquiries, unlike court proceedings, are not subject to the exacting standards of evidence essential to arrive at accurate factual findings to which to apply the law. Hence, Section 10 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provides that "technical rules of evidence applicable to judicial proceedings which do not affect substantive rights need not be observed by the Committee." Court rules which prohibit leading, hypothetical, or repetitive questions or questions calling for a hearsay answer, to name a few, do not apply to a legislative inquiry. Every person, from the highest public official to the most ordinary citizen, has the right to be presumed innocent until proven guilty in proper proceedings by a competent court or body.

12. ID.; ID.; ID.; ID.; SENATE AND THE CONDUCT OF ITS BUSINESS; NATURE. — [A]ll pending matters and proceedings, *i.e.*, unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered **terminated** upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, **not in the same status,** but as if presented **for the first time.** The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. If the Senate is a continuing body even with respect to the conduct of its business, then pending matters will not be deemed terminated with the expiration of one Congress but will, as a matter of course, continue into the next Congress with the same

status. This dichotomy of the continuity of the Senate as an institution and of the opposite nature of the conduct of its business is reflected in its Rules. x x x Section 136 of the Senate Rules takes into account the new composition of the Senate after an election and the possibility of the amendment or revision of the Rules at the start of each session in which the newly elected Senators shall begin their term. However, it is evident that the Senate has determined that its main rules are intended to be valid from the date of their adoption until they are amended or repealed. Such language is conspicuously absent from the *Rules*. The *Rules* simply state "(t)hese Rules shall take effect seven (7) days after publication in two (2) newspapers of general circulation." The latter does not explicitly provide for the continued effectivity of such rules until they are amended or repealed. In view of the difference in the language of the two sets of Senate rules, it cannot be presumed that the *Rules* (on legislative inquiries) would continue into the next Congress. The Senate of the next Congress may easily adopt different rules for its legislative inquiries which come within the rule on unfinished business. The language of Section 21, Article VI of the Constitution requiring that the inquiry be conducted in accordance with the **duly published rules of procedure** is categorical. It is incumbent upon the Senate to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed to sufficiently put public on notice.

QUISUMBING, *J., separate opinion on the Motion for Reconsideration:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; SENATE; SENATE RULES OF PROCEDURE; REQUIREMENT OF PUBLICATION, EXPLAINED. — [I]t is indispensable that the Senate Rules of Procedure during the current 14th Congress must be duly published. The problem is, the rules have not been published in the Official Gazette or newspaper of general circulation as required by *Tañada v. Tuvera*. Publication in either of these forms is mandatory to comply with the due process requirement. Due process requires that fair notice be given to those concerned before the rules that put their liberty at risk take effect. x x x In the absence

of a published rule of procedure on a matter which is the subject of legislative inquiry, any action which affects substantial rights of persons would be anathema, and risks unconstitutionality. Even if there is such a rule or statute duly published, if it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application, the rule or statute would be repugnant to the Constitution in two respects: it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves the law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. How much more in this case where there is a patent lack of publication and proper notice of the applicable rules. Or where the rules are misread and misapplied resulting in lack of quorum. Beyond debate, the fundamental law prohibits deprivation of liberty without due process of law. Comparatively speaking, the Court has on many occasions required judges to comply strictly with the due process requirements on issuing warrants of arrest, failure of which has resulted in the voiding of the warrants. The denial of a person's fundamental right to due process amounts to the illegality of the proceedings against him. The doctrine consistently adhered to by the Supreme Court is that a denial of due process suffices to cast on the official act taken by whichever branch of the government the impress of nullity, the fundamental right to due process being a cornerstone of our legal system. The right to due process is a cardinal and primary right which must be respected in all proceedings.

2. ID.; ID.; ID.; BILL OF RIGHTS; DUE PROCESS; ESSENCE. — It is a well-settled principle in law that what due process contemplates is freedom from arbitrariness; what it requires is fairness and justice; substance, rather than form, being paramount. It is essential that the contemner be granted an opportunity to meet the charges against him and to be heard in his defense, as contempt of court proceedings are commonly treated as criminal in nature. A finding of guilt for an offense, no matter how light, for which one is not properly charged and tried cannot be countenanced without violating the rudimentary principle of due process.

REYES, R.T., *J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; EXECUTIVE PRIVILEGE; PRESIDENTIAL COMMUNICATIONS PRIVILEGE AND EXECUTIVE PRIVILEGE BASED ON DIPLOMACY AND FOREIGN RELATIONS, DISTINGUISHED. — The distinction between presidential **communication** privilege and executive privilege based on **diplomacy and foreign relations** is important because they are two different categories of executive privilege recognized by jurisprudence. The first pertains to those communications between the President and her close advisors relating to official or state matters; the second are those matters that have a direct bearing on the conduct of our external affairs with other nations, in this case the Republic of China. The two categories of executive privilege have different rationale. Presidential communication privilege is grounded on the paramount need for candor between the President and her close advisors. It gives the President and those assisting her sufficient freedom to interact without fear of undue public scrutiny. On the other hand, executive privilege on matters concerning our diplomatic or foreign relations is akin to state secret privilege which, when divulged, will unduly impair our external relations with other countries.

2. ID.; ID.; ID.; ID.; ID.; ID.; NEED FOR SPECIFICITY IN CLAIMING THE PRIVILEGE, EXPLAINED. — *Senate of the Philippines v. Ermita* mandates that a claim of privilege must specify the grounds relied upon by the claimant. The degree of specificity required obviously depends on the nature of the information to be disclosed. As to presidential **communication** privilege, the requirement of specificity is not difficult to meet. This kind of privilege easily passes the test. As long as the subject matter pertains to a communication between the President and her close advisor concerning official or state matters, the requirement is complied with. x x x Of course, there is a presumption that every communication between the President and her close advisor pertains to an official or state matter. The burden is on the party seeking disclosure to prove that the communication is not in an official capacity. The fact of conversation is the trigger of the presidential communication privilege. There is no need to give specifics or particulars of the contents of the conversation because that will obviously

divulge the very matter which the privilege is meant to protect. It will be an illusory privilege if a more stringent standard is required. In contrast, a relatively higher standard of specificity is required for a claim of executive privilege based on **diplomacy or foreign relations.** As in state secrets, this type of executive privilege is content based. This means that the claim is dependent on the very content of the information sought to be disclosed. To adequately assess the validity of the claim, there is a need for the court, usually in closed session, to become privy to the information. This will enable the court to sufficiently assess whether or not the information claimed to be privileged will actually impair our diplomatic or foreign relations with other countries. It is the content of the information and its effect that trigger the privilege. To be sure, a generalized claim of privilege will not pass the more stringent test of specificity.

3. ID.; ID.; ID.; ID.; ID.; PRESIDENTIAL COMMUNICATION PRIVILEGE; THERE IS A QUALIFIED PRESUMPTION IN FAVOR OF PRESIDENTIAL COMMUNICATION PRIVILEGE. — American jurisprudence bestows a **qualified** presumption in favor of presidential communication privilege. This means that the initial point is against disclosure of the contents of the communication between the President and her close advisors. The burden of proof is on the agency or body seeking disclosure to show compelling reasons to overcome the presumption.

4. ID.; ID.; ID.; ID.; ID.; ID.; NOT ABSOLUTE. — The fact that presidential communication is privileged is not the end of the matter. It is merely the starting point of the inquiry. In *Senate of the Philippines v. Ermita,* this Court stated: *"That a type of information is recognized as privileged does not, however, necessarily mean that it would be considered privileged in all instances.* For in determining the validity of a claim of privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also whether that privilege should be honored in a given procedural setting." x x x The agency or body seeking disclosure must present **compelling** reasons to overcome the presumption.

5. ID.; ID.; ID.; ID.; ID.; A CLAIM OF EXECUTIVE PRIVILEGE IS HONORED IN CIVIL, BUT NOT IN CRIMINAL PROCEEDINGS. — There is a consensus among the Justices

of this Court that a claim of executive privilege cannot succeed in a criminal proceeding. The reason is simple. The right of the accused to due process of law requires nothing less than full disclosure. When vital information that may exculpate the accused from a crime is withheld from the courts, the wheels of justice will be stymied and the constitutional right of the accused to due process of law becomes illusory. It is the crucial need for the information covered by the privilege and the dire consequences of nondisclosure on the discharge of an essential judicial function which trumps executive privilege. x x x [I]n contrast, executive privilege is generally honored in a civil proceeding. The need for information in a civil case is not as significant or does not have the same stakes as in a criminal trial. Unlike the accused in a criminal trial, the defendant in a civil case will not lose his life or liberty when information covered by executive privilege is left undisclosed to the courts. Moreover, there is the exacting duty of the courts to prove the guilt of the accused beyond reasonable doubt. But mere preponderance of evidence is required in a civil case to deliver a verdict for either party. That burden may be hurdled even without a full disclosure of information covered by the executive privilege.

6. ID.; ID.; ID.; ID.; ID.; PRESIDENTIAL COMMUNICATION PRIVILEGE; SIGNIFICANT TESTS IN REBUTTING THE QUALIFIED PRESUMPTION OF PRESIDENTIAL COMMUNICATION PRIVILEGE, EXPLAINED.— The "balancing test" and the "function impairment test" approximate the test applied by the Supreme Court of the United States in *Nixon* and *Cheney*. An analysis of *Nixon* and *Cheney* reveals that the test must be anchored on two points. **One**, the compelling need for the information covered by the privilege by the body or agency seeking disclosure. **Two**, the effect of non-disclosure on the efficient discharge of the constitutional function of the body or agency seeking the information. Both requisites must concur although the two may overlap. If there is a compelling need for the information, it is more likely that the agency seeking disclosure cannot effectively discharge its constitutional function without the required information. Disclosure is precisely sought by that agency in order for it to effectively discharge its constitutional duty. But it may also be true that there is a compelling need for the information but

the agency or body seeking disclosure may still effectively discharge its constitutional duty even without the information. The presence of alternatives or adequate substitutes for the information may render disclosure of the information unnecessary. The starting point is against disclosure of the contents of the communication between the President and her close advisors because of the qualified presumption of presidential communication privilege. The burden is on the party seeking disclosure to prove a **compelling** need for the information. But mere compelling need is insufficient. The branch or agency seeking the information must **also** show that it cannot effectively discharge its constitutional function without access to the information covered by the privilege. The degree of impairment of the constitutional function of the agency seeking disclosure must be **significant** or **substantial** as to render it unable to efficiently discharge its constitutional duty. In *Nixon*, the harm occasioned by non-disclosure was held to "cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts." In contrast, the harm in a civil proceeding was held to be only minor or insignificant, which rendered disclosure unnecessary.

7. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; SENATE; SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION; PUBLICATION THEREOF, REQUIRED. — [A]s the Constitution mandates, the Senate may only conduct an investigation in aid of legislation pursuant to its duly **published** rules of procedure. Without publication, the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is ineffective. Thus, unless and until said publication is done, the Senate cannot enforce its own rules of procedure, including its power to cite a witness in contempt under Section 18.

8. ID.; ID.; ID.; ID.; ID.; THE SENATE IS A CONTINUING BODY; ELUCIDATED. — The term of a Senator starts at noon of June 30 next following their election and shall end before noon of June 30 six years after. The constitutional provision aims to prevent a vacuum in the office of an outgoing Senator during elections, which is fixed under the Constitution unless changed by law on the second Monday of May, until June 30 when the Senators-elect assume their office. There is no vacuum created because at the time an outgoing Senator's term ends, the term

of a Senator-elect begins. The same principle holds true for the office of the President. A president-elect does not assume office until noon of June 30 next following a presidential election. An outgoing President does not cease to perform the duties and responsibilities of a President merely because the people had chosen his/her new successor. Until her term expires, an outgoing President has the constitutional duty to discharge the powers and functions of a President unless restricted by the Constitution. In fine, the Senate is a continuing body as it continues to have a full or at least majority membership even during elections until the assumption of office of the Senators-elect. The Senate as an institution does not cease to have a quorum to do business even during elections. It is to be noted that the Senate is not in session during an election until the opening of a new Congress for practical reasons. This does not mean, however, that outgoing Senators cease to perform their duties as Senators of the Republic during such elections. When the President proclaims martial law or suspends the writ of *habeas corpus*, for example, the Congress including the outgoing Senators are required to convene if not in session within 24 hours in accordance with its rules without need of call.

9. ID.; ID.; ID.; ID.; ID.; SENATE RULES OF PROCEDURE; REPUBLICATION THEREOF, WHEN REQUIRED. — The Constitutional provision requiring publication of Senate rules is contained in Section 21, Article VI of the 1987 Constitution, which reads: "The Senate or the House of Representatives or any of its respective Committees may conduct **inquiries in aid of legislation in accordance with its duly published rules of procedure.** The rights of persons appearing in or affected by such inquiries shall be respected." The above provision only requires a **"duly published"** rule of procedure for inquiries in aid of legislation. It is silent on republication. There is nothing in the constitutional provision that commands that every new Congress must publish its rules of procedure. Implicitly, republication is necessary only when there is an amendment or revision to the rules. This is required under the due process clause of the Constitution.

PUNO, *C.J.*, *dissenting opinion:*

1. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION OF LAWS, A CONDITION FOR THEIR EFFECTIVITY. — [A]n omission of publication would offend **due process** insofar as it would **deny the public knowledge of the laws that are supposed to govern it.** x x x [I]t is not unlikely that persons not aware of the laws would be prejudiced as a result, and not because of a failure to comply with them, but simply because they did not know of their existence. Thus, the Court concluded that ". . . *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature. . . Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation." While the Court acknowledged that newspapers of general circulation, instead of the Official Gazette, could better perform the function of communicating laws to the public — as such periodicals are more easily available, have a wider readership, and come out regularly — it was constrained to hold that publication must be made in the Official Gazette because that was the requirement in Article 2 of the Civil Code. Subsequently, President Corazon C. Aquino issued Executive Order No. 200, allowing publication either in the Official Gazette or in a **newspaper of general circulation in the Philippines.**

2. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; SENATE; THE NATURE THEREOF AS A CONTINUING BODY IS HINGED ON THE STAGGERING OF TERMS OF THE SENATORS. — [T]he Rules of Procedure Governing Inquiries need not be published by the Senate of every Congress, as the **Senate is a continuing body.** The continuity of these rules from one Congress to the next is both an incident and an indicium of the continuing nature of the Senate. **[T]he nature of the Senate as a continuing body hinged on the staggering of terms of the Senators,** such that the term of one-half or twelve of the Senators ("remaining Senators") would subsist and continue into the succeeding Congress, while the term of the other half or twelve Senators ("outgoing Senators") would expire in the present Congress. x x x [T]his arrangement whereby half of the Senate's membership continues

into the next Congress is designed to help **ensure "stability of governmental policies." The structure of the Philippine Senate being evidently patterned after the U.S. Senate, it reflects the latter's rationale for staggering senatorial terms and constituting the Senate as a continuing body.**

3. ID.; ID.; ID.; ID.; ID.; TERM OF OFFICE OF SENATORS AND QUORUM; EXPLAINED. — Article VI, Section 4 of the 1987 Constitution, provides that, "(t)he term of office of the Senators shall be **six years** and shall commence, unless otherwise provided by law, at **noon on the thirtieth day of June next following their election.**" Pursuant to this provision, the term of office of a Senator expires before noon on the thirtieth day of June, six years from commencement of his term. Thus, upon expiration of the term of the twelve "outgoing Senators" on June 30, the term of the twelve "new Senators" will commence. The Senators-elect take their oath of office upon commencement of their term and begin to exercise their functions; the collective oath-taking of the Senators upon the opening of Congress is normally but a tradition and a formality. x x x **[A]t no point from one Congress to the next is there a lack of quorum based on the terms of office of the "remaining Senators" and "new Senators."** Under the 1987 Constitution, on the opening of a Congress on the fourth Monday of July, the quorum is based on the number of both the "remaining Senators" and the "new Senators" whose terms have already commenced on June 30. A similar situation obtained under the 1935 Constitution, in which three sets of eight Senators had staggered six-year terms. Article VI, Section 3 of the 1935 Constitution provides: "The term of office of Senators shall be six years and shall begin on the thirtieth day of December next following their election." **Thus, the Senate under both the 1935 and the 1987 Constitutions counted the quorum based on the number of "remaining Senators" and "new Senators" upon opening of every Congress.** This **unbroken practice** of the Senate of counting the quorum at the start of every new Congress based on both the "remaining Senators" and "new Senators," and not only on the two-thirds or one-half "remaining Senators," is **not something to be lightly cast aside** in ascertaining the nature of the Senate as a continuing body. x x x **[I]t is the staggering of the terms of the 24 Senators and allowing the terms of office of a portion of the Senate membership to continue into the succeeding Congress — whether two-thirds under the 1935**

Constitution or one-half under the 1987 Constitution — that provides the stability indispensable to an effective government, and makes the Senate a continuing body as intended by the framers of both the 1935 (as amended) and the 1987 Constitutions.

4. ID.; ID.; ID.; ID.; ID.; SENATE RULES; NATURE. — Part of the stability provided by a continuing Senate is the **existence of rules of proceedings** adopted pursuant to the power granted by the U.S. Constitution, **rules that continue to be in effect from one Congress to the next** until such rules are repealed or amended, but with the process for repeal and amendment also being governed by the subsisting rules. U.S. Senator Francis Warren cautions that **a Senate that is not continuing, but instead new in each Congress, opens all rules to debate as a new matter; the Senate will be totally and wholly without rules as it proceeds "at sea without rudder or compass regarding rules."** Thus, in the U.S., the Senate rules of proceedings provide that "(t)he rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules." These rules, adopted on January 11, 1884 and made effective on January 21, 1884, continue to be in effect to this day alongside the continuing membership of the Senate. Patterned after the U.S. Constitution, the 1987 Constitution also provides under Article VI, Section 16 (3) that "(e)ach House may determine the rules of its proceedings. . ." **As in the U.S. Senate, the Senate Rules (of proceedings) adopted by the Philippine Senate have a continued effect from one Congress to the next** as shown by the following provisions of the Philippine Senate Rules: "Rule LII (Date of Taking Effect), Section 137: These Rules shall **take effect on the date of their adoption and shall remain in force** until they are amended or repealed." x x x "Rule LI (Amendments to, or revisions of, The Rules), Section 136: **At the start of each session in which the Senators elected in the preceding elections shall begin their term of office, the President may endorse the Rules to the appropriate committee for amendment or revision.** "The Rules may also be amended by means of a motion which should be presented at least one day before its consideration, and the vote of the majority of the Senators present in the session shall be required for its approval." **It is obvious that the above rules do not provide for the expiration of the Senate Rules at the termination of every Congress.** On the contrary, Rule LI provides that at the

opening of every Congress, the Senate President may endorse the Senate Rules to the appropriate committee for amendment or revision, which connotes that the Senate Rules must be subsisting for them to be subject to amendment or revision. If the Senate were not a continuing body, the Senate Rules governing its proceedings would not be given continuing effect from one Congress to the next. **The earlier Senate Rules adopted in 1950 under the 1935 Constitution also evince the same intent of the Senate to make its rules continuing, in conformity with its continuous nature as a legislative body.** x x x While the present Senate Rules provide under Rule XLIV (Unfinished Business), Section 123 that "(a)ll pending matters and proceedings shall terminate upon the expiration of one (1) Congress," **between the expiration of a Congress and the opening of the succeeding Congress, some functions of the Senate continue during such recess.** Aside from the administrative functions performed by Senate employees for the continued operation of the Senate as an institution, **legislative functions continue to be exercised.** The offices of the "remaining Senators" continue their legislative work in preparation for the succeeding Congress. These continuing functions require continuing effectivity of the Senate Rules.

5. ID.; ID.; ID.; ID.; ID.; ID.; PUBLICATION THEREOF; ELUCIDATED. — I submit that the Court ought to take a deferential stance in interpreting the rule-making power of the Senate as a co-equal branch of government, so long as rights of private parties are not infringed. The Rules of Procedure Governing Inquiries is akin to the Senate Rules (of proceeding) in that the former governs the internal workings of the Senate and its committees, although admittedly different in some respects from the Senate Rules because it affects rights of parties not members of the Senate and, hence, requires publication. To the extent that the Rules of Procedure Governing Inquiries does not transgress the requirement of due process as its outer limit, the Senate should be given room to interpret the duration of its effectivity from one Congress to the next. x x x [T]here is **no standard set by Article VI, Section 21 of the 1987 Constitution, as to the manner and frequency of publication of the Rules of Procedure Governing Inquiries.** It is within **the competency of the Senate to prescribe a method** that shall **reasonably conform to the due-process purpose of**

publication, and the Senate has validly provided the method of one-time publication of its Rules of Procedure Governing Inquiries in two newspapers of general circulation, in line with the ruling in Tañada. The **unbroken practice of the Senate** of not adopting Rules of Procedure Governing Inquiries and publishing the same in every Congress, owing to its nature as a continuing body, **is not something to be lightly brushed aside, especially considering the grave consequences of cutting this continuity.** Holding itself to be a continuing body, the Senate has dispensed with the adoption not only of Rules of Procedure Governing Inquiries, but also of Senate rules (of proceedings) at the start of every Congress in the last ten years. As a consequence of the absence of rules if the Senate is held to be not a continuing body, its acts during these Congresses may be put into question. A mathematical calculation of a quorum in view of the staggered terms of the Senate membership cannot simply subvert the deeply-entrenched thought-out rationale for the design of a continuing and stable Senate, shown to be necessary in promoting effective government and protecting liberties.

AZCUNA, *J., separate dissenting opinion:*

POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; SENATE; NEED NOT RE-PUBLISH ITS RULES WITH EVERY NEW CONGRESS.— It was the intent of the Constitutional Commission to preserve the nature of the Senate as a continuing body to provide an institutional memory in the legislature. The deliberations in the Commission, cited by the Chief Justice, clearly bear this out. The Senate, therefore, need not re-publish its Rules with every new Congress. x x x [S]pecific provisions of the present Constitution conferred on Congress an information function, apart from its legislative function, which it may exercise to enable our people to effectively take part in governance. The Senate investigation at issue is, therefore, in order even apart from the power to legislate.

APPEARANCES OF COUNSEL

Antonio R. Bautista & Partners for petitioner.

Pacifico A. Agabin, Jose Anselmo I. Cadiz and *Carlos P. Medina, Jr.* for respondents.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Executive privilege is not a personal privilege, but one that adheres to the Office of the President. It exists to protect public interest, not to benefit a particular public official. Its purpose, among others, is to assure that the nation will receive the benefit of candid, objective and untrammeled communication and exchange of information between the President and his/her advisers in the process of shaping or forming policies and arriving at decisions in the exercise of the functions of the Presidency under the Constitution. The confidentiality of the President's conversations and correspondence is not unique. It is akin to the confidentiality of judicial deliberations. It possesses the same value as the right to privacy of all citizens and more, because it is dictated by public interest and the constitutionally ordained separation of governmental powers.

In these proceedings, this Court has been called upon to exercise its power of review and arbitrate a hotly, even acrimoniously, debated dispute between the Court's co-equal branches of government. In this task, this Court should neither curb the legitimate powers of any of the co-equal and coordinate branches of government nor allow any of them to overstep the boundaries set for it by our Constitution. The competing interests in the case at bar are the claim of executive privilege by the President, on the one hand, and the respondent Senate Committees' assertion of their power to conduct legislative inquiries, on the other. The particular facts and circumstances of the present case, stripped of the politically and emotionally charged rhetoric from both sides and viewed in the light of settled constitutional and legal doctrines, plainly lead to the conclusion that the claim of executive privilege must be upheld.

Assailed in this motion for reconsideration is our Decision dated March 25, 2008 (the "Decision"), granting the petition for *certiorari* filed by petitioner Romulo L. Neri against the respondent Senate Committees on Accountability of Public

Officers and Investigations,[1] Trade and Commerce,[2] and National Defense and Security (collectively the "respondent Committees").[3]

A brief review of the facts is imperative.

On September 26, 2007, petitioner appeared before respondent Committees and testified for about eleven (11) hours on matters concerning the National Broadband Project (the "NBN Project"), a project awarded by the Department of Transportation and Communications ("DOTC") to Zhong Xing Telecommunications Equipment ("ZTE"). Petitioner disclosed that then Commission on Elections ("COMELEC") Chairman Benjamin Abalos offered him ₱200 Million in exchange for his approval of the NBN Project. He further narrated that he informed President Gloria Macapagal Arroyo ("President Arroyo") of the bribery attempt and that she instructed him not to accept the bribe. However, when probed further on President Arroyo and petitioner's discussions relating to the NBN Project, petitioner refused to answer, invoking "executive privilege." To be specific, petitioner refused to answer questions on: **(a)** whether or not President Arroyo followed up the NBN Project,[4] **(b)** whether or not she directed him to prioritize it,[5] and **(c)** whether or not she directed him to approve it.[6]

Respondent Committees persisted in knowing petitioner's answers to these three questions by requiring him to appear and testify once more on November 20, 2007. On November 15, 2007, Executive Secretary Eduardo R. Ermita wrote to respondent Committees and requested them to dispense with petitioner's testimony on the ground of executive privilege.[7] The letter of Executive Secretary Ermita pertinently stated:

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[1] Chaired by Hon. Senator Alan Peter S. Cayetano.

[2] Chaired by Hon. Senator Manuel A. Roxas II.

[3] Chaired by Hon. Senator Rodolfo G. Biazon.

[4] Transcript of the September 26, 2007 Hearing of the respondent Committees, pp. 91-92.

[5] *Id.*, pp. 114-115.

[6] *Id.*, pp. 276-277.

[7] See Letter dated November 15, 2007.

Following the ruling in *Senate v. Ermita*, the foregoing questions fall under conversations and correspondence between the President and public officials which are considered executive privilege (*Almonte v. Vasquez*, G.R. 95637, 23 May 1995; *Chavez v. PEA*, G.R. 133250, July 9, 2002). Maintaining the confidentiality of conversations of the President is necessary in the exercise of her executive and policy decision making process. The expectation of a President to the confidentiality of her conversations and correspondences, like the value which we accord deference for the privacy of all citizens, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. Disclosure of conversations of the President will have a chilling effect on the President, and will hamper her in the effective discharge of her duties and responsibilities, if she is not protected by the confidentiality of her conversations.

The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China. Given the confidential nature in which these information were conveyed to the President, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect.

In light of the above considerations, this Office is constrained to invoke the settled doctrine of executive privilege as refined in *Senate v. Ermita*, and has advised Secretary Neri accordingly.

Considering that Sec. Neri has been lengthily interrogated on the subject in an unprecedented 11-hour hearing, wherein he has answered all questions propounded to him except the foregoing questions involving executive privilege, we therefore request that his testimony on 20 November 2007 on the ZTE / NBN project be dispensed with.

On November 20, 2007, petitioner did not appear before respondent Committees upon orders of the President invoking executive privilege. On November 22, 2007, the respondent Committees issued the show-cause letter requiring him to explain why he should not be cited in contempt. On November 29, 2007, in petitioner's reply to respondent Committees, he manifested that it was not his intention to ignore the Senate hearing and that he thought the only remaining questions were those he claimed to be covered by executive privilege. He also

manifested his willingness to appear and testify should there be new matters to be taken up. He just requested that he be furnished "in advance as to what else" he "needs to clarify."

Respondent Committees found petitioner's explanations unsatisfactory. Without responding to his request for advance notice of the matters that he should still clarify, they issued the Order dated January 30, 2008; In Re: P.S. Res. Nos. 127,129,136 & 144; and privilege speeches of Senator Lacson and Santiago (all on the ZTE-NBN Project), citing petitioner in contempt of respondent Committees and ordering his arrest and detention at the Office of the Senate Sergeant-at-Arms until such time that he would appear and give his testimony.

On the same date, petitioner moved for the reconsideration of the above Order.[8] He insisted that he had not shown "any contemptible conduct worthy of contempt and arrest." He emphasized his willingness to testify on new matters, but respondent Committees did not respond to his request for advance notice of questions. He also mentioned the petition for *certiorari* he previously filed with this Court on December 7, 2007. According to him, this should restrain respondent Committees from enforcing the order dated January 30, 2008 which declared him in contempt and directed his arrest and detention.

Petitioner then filed his Supplemental Petition for *Certiorari* (with Urgent Application for TRO/Preliminary Injunction) on February 1, 2008. In the Court's Resolution dated February 4, 2008, the parties were required to observe the status quo prevailing prior to the Order dated January 30, 2008.

On March 25, 2008, the Court granted his petition for *certiorari* on two grounds: ***first***, the communications elicited by the three (3) questions were covered by executive privilege; and ***second,*** respondent Committees committed grave abuse of discretion in issuing the contempt order. Anent the first ground, we considered the subject communications as falling under the **presidential communications privilege** because **(a)** they related to a quintessential and non-delegable power of the

[8] See Letter dated January 30, 2008.

President, **(b)** they were received by a close advisor of the President, and **(c)** respondent Committees failed to adequately show a compelling need that would justify the limitation of the privilege and the unavailability of the information elsewhere by an appropriate investigating authority. As to the second ground, we found that respondent Committees committed grave abuse of discretion in issuing the contempt order because **(a)** there was a valid claim of executive privilege, **(b)** their invitations to petitioner did not contain the questions relevant to the inquiry, **(c)** there was a cloud of doubt as to the regularity of the proceeding that led to their issuance of the contempt order, **(d)** they violated Section 21, Article VI of the Constitution because their inquiry was not in accordance with the "duly published rules of procedure," and **(e)** they issued the contempt order arbitrarily and precipitately.

On April 8, 2008, respondent Committees filed the present motion for reconsideration, anchored on the following grounds:

I

CONTRARY TO THIS HONORABLE COURT'S DECISION, THERE IS NO DOUBT THAT THE ASSAILED ORDERS WERE ISSUED BY RESPONDENT COMMITTEES PURSUANT TO THE EXERCISE OF THEIR LEGISLATIVE POWER, AND NOT MERELY THEIR OVERSIGHT FUNCTIONS.

II

CONTRARY TO THIS HONORABLE COURT'S DECISION, THERE CAN BE NO PRESUMPTION THAT THE INFORMATION WITHHELD IN THE INSTANT CASE IS PRIVILEGED.

III

CONTRARY TO THIS HONORABLE COURT'S DECISION, THERE IS NO FACTUAL OR LEGAL BASIS TO HOLD THAT THE COMMUNICATIONS ELICITED BY THE SUBJECT THREE (3) QUESTIONS ARE COVERED BY EXECUTIVE PRIVILEGE, CONSIDERING THAT:

A. THERE IS NO SHOWING THAT THE MATTERS FOR WHICH EXECUTIVE PRIVILEGE IS CLAIMED CONSTITUTE STATE SECRETS.

B. EVEN IF THE TESTS ADOPTED BY THIS HONORABLE COURT IN THE DECISION IS APPLIED, THERE IS NO SHOWING THAT THE ELEMENTS OF PRESIDENTIAL COMMUNICATIONS PRIVILEGE ARE PRESENT.

C. ON THE CONTRARY, THERE IS ADEQUATE SHOWING OF A COMPELLING NEED TO JUSTIFY THE DISCLOSURE OF THE INFORMATION SOUGHT.

D. TO UPHOLD THE CLAIM OF EXECUTIVE PRIVILEGE IN THE INSTANT CASE WOULD SERIOUSLY IMPAIR THE RESPONDENTS' PERFORMANCE OF THEIR PRIMARY FUNCTION TO ENACT LAWS.

E. FINALLY, THE CONSTITUTIONAL RIGHT OF THE PEOPLE TO INFORMATION, AND THE CONSTITUTIONAL POLICIES ON PUBLIC ACCOUNTABILITY AND TRANSPARENCY OUTWEIGH THE CLAIM OF EXECUTIVE PRIVILEGE.

IV

CONTRARY TO THIS HONORABLE COURT'S DECISION, RESPONDENTS DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ISSUING THE ASSAILED CONTEMPT ORDER, CONSIDERING THAT:

A. THERE IS NO LEGITIMATE CLAIM OF EXECUTIVE PRIVILEGE IN THE INSTANT CASE.

B. RESPONDENTS DID NOT VIOLATE THE SUPPOSED REQUIREMENTS LAID DOWN IN *SENATE V. ERMITA*.

C. RESPONDENTS DULY ISSUED THE CONTEMPT ORDER IN ACCORDANCE WITH THEIR INTERNAL RULES.

D. RESPONDENTS DID NOT VIOLATE THE REQUIREMENTS UNDER ARTICLE VI, SECTION 21 OF THE CONSTITUTION REQUIRING THAT ITS RULES OF PROCEDURE BE DULY PUBLISHED, AND WERE DENIED DUE PROCESS WHEN THE COURT CONSIDERED THE OSG'S INTERVENTION ON

THIS ISSUE WITHOUT GIVING RESPONDENTS THE OPPORTUNITY TO COMMENT.

E. RESPONDENTS' ISSUANCE OF THE CONTEMPT ORDER IS NOT ARBITRARY OR PRECIPITATE.

In his Comment, petitioner charges respondent Committees with exaggerating and distorting the Decision of this Court. He avers that there is nothing in it that prohibits respondent Committees from investigating the NBN Project or asking him additional questions. According to petitioner, the Court merely applied the rule on executive privilege to the facts of the case. He further submits the following contentions: ***first***, the assailed Decision did not reverse the presumption against executive secrecy laid down in *Senate v. Ermita;* ***second***, respondent Committees failed to overcome the presumption of executive privilege because it appears that they could legislate even without the communications elicited by the three (3) questions, and they admitted that they could dispense with petitioner's testimony if certain NEDA documents would be given to them; ***third***, the requirement of specificity applies only to the privilege for State, military and diplomatic secrets, not to the necessarily broad and all-encompassing presidential communications privilege; ***fourth***, there is no right to pry into the President's thought processes or exploratory exchanges; ***fifth***, petitioner is not covering up or hiding anything illegal; ***sixth***, the Court has the power and duty to annul the Senate Rules; ***seventh***, the Senate is not a continuing body, thus the failure of the present Senate to publish its *Rules of Procedure Governing Inquiries in Aid of Legislation (Rules)* has a vitiating effect on them; ***eighth,*** the requirement for a witness to be furnished advance copy of questions comports with due process and the constitutional mandate that the rights of witnesses be respected; and ***ninth***, neither petitioner nor respondent has the final say on the matter of executive privilege, only the Court.

For its part, the Office of the Solicitor General maintains that: **(1)** there is no categorical pronouncement from the Court that the assailed Orders were issued by respondent Committees pursuant to their oversight function; hence, there

is no reason for them "to make much" of the distinction between Sections 21 and 22, Article VI of the Constitution; **(2)** presidential communications enjoy a presumptive privilege against disclosure as earlier held in *Almonte v. Vasquez*[9] and *Chavez v. Public Estates Authority (PEA)*;[10] **(3)** the communications elicited by the three (3) questions are covered by executive privilege, because all the elements of the presidential communications privilege are present; **(4)** the subpoena *ad testificandum* issued by respondent Committees to petitioner is fatally defective under existing law and jurisprudence; **(5)** the failure of the present Senate to publish its *Rules* renders the same void; and **(6)** respondent Committees arbitrarily issued the contempt order.

Incidentally, respondent Committees' objection to the Resolution dated March 18, 2008 (granting the Office of the Solicitor General's Motion for Leave to Intervene and to Admit Attached Memorandum) only after the promulgation of the Decision in this case is foreclosed by its untimeliness.

The core issues that arise from the foregoing respective contentions of the opposing parties are as follows:

(1) whether or not there is a recognized presumptive presidential communications privilege in our legal system;

(2) whether or not there is factual or legal basis to hold that the communications elicited by the three (3) questions are covered by executive privilege;

(3) whether or not respondent Committees have shown that the communications elicited by the three (3) questions are critical to the exercise of their functions; and

(4) whether or not respondent Committees committed grave abuse of discretion in issuing the contempt order.

We shall discuss these issues *seriatim*.

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[9] G.R. No. 95367, May 23, 1995, 244 SCRA 286.

[10] 433 Phil. 506 (2002).

I

There Is a Recognized Presumptive Presidential Communications Privilege

Respondent Committees ardently argue that the Court's declaration that presidential communications are presumptively privileged reverses the "presumption" laid down in *Senate v. Ermita*[11] that "inclines heavily against executive secrecy and in favor of disclosure." Respondent Committees then claim that the Court erred in relying on the doctrine in *Nixon*.

Respondent Committees argue as if this were the first time the presumption in favor of the **presidential communications privilege** is mentioned and adopted in our legal system. That is far from the truth. The Court, in the earlier case of *Almonte v. Vasquez*,[12] affirmed that the **presidential communications privilege** is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution. Even *Senate v. Ermita*,[13] the case relied upon by respondent Committees, reiterated this concept. There, the Court enumerated the cases in which the claim of executive privilege was recognized, among them *Almonte v. Chavez, Chavez v. Presidential Commission on Good Government (PCGG)*,[14] and *Chavez v. PEA*.[15] The Court articulated in these cases that "there are certain types of information which the government may withhold from the public,"[16] that there is a "governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters";[17] and that **"the right to information does not extend to matters recognized as 'privileged information' under the separation**

[11] G.R. No. 169777, April 20, 2006, 488 SCRA 1.

[12] *Supra*, note 9.

[13] *Supra*, note 11.

[14] G.R. No. 130716, December 9, 1998, 299 SCRA 744.

[15] *Supra*, note 10.

[16] *Almonte v. Vasquez, supra*, note 9.

[17] *Chavez v. PCGG, supra*, note 14.

of powers, by which the Court meant Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings."[18]

Respondent Committees' observation that this Court's Decision reversed the "presumption that inclines heavily against executive secrecy and in favor of disclosure" arises from a piecemeal interpretation of the said Decision. The Court has repeatedly held that in order to arrive at the true intent and meaning of a decision, no specific portion thereof should be isolated and resorted to, but the decision must be considered in its entirety.[19]

Note that the aforesaid presumption is made in the context of the circumstances obtaining in *Senate v. Ermita*, which declared void Sections 2(b) and 3 of Executive Order (E.O.) No. 464, Series of 2005. The pertinent portion of the decision in the said case reads:

> From the above discussion on the meaning and scope of executive privilege, both in the United States and in this jurisprudence, a clear principle emerges. Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to *certain types of information of a sensitive character*. While executive privilege is a constitutional concept, a **claim** thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. Indeed, **the extraordinary character of the exemptions indicates that the presumption inclines heavily *against* executive secrecy and in favor of disclosure.** (Emphasis and underscoring supplied)

Obviously, the last sentence of the above-quoted paragraph in *Senate v. Ermita* refers to the "exemption" being claimed by the executive officials mentioned in Section 2(b) of E.O.

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[18] *Senate v. Ermita, supra.,* note 11.

[19] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals,* G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565, 587; *Valderama v. NLRC*, G.R. No. 98239, April 25,1996, 256 SCRA 466, 472 citing *Policarpio v. P.V.B. and Associated Ins. & Surety Co., Inc.*, 106 Phil. 125, 131 (1959).

No. 464, solely by virtue of their positions in the Executive Branch. This means that when an executive official, who is one of those mentioned in the said Sec. 2(b) of E.O. No. 464, claims to be exempt from disclosure, there can be **no presumption of authorization to invoke executive privilege given by the President** to said executive official, such that the presumption in this situation inclines heavily against executive secrecy and in favor of disclosure.

Senate v. Ermita[20] expounds on the premise of the foregoing ruling in this wise:

> Section 2(b) in relation to Section 3 virtually provides that, once the head of office determines that a certain information is privileged, such determination is presumed to bear the President's authority and has the effect of prohibiting the official from appearing before Congress, subject only to the express pronouncement of the President that it is allowing the appearance of such official. These provisions thus allow the President to authorize claims of privilege by mere silence.
>
> Such presumptive authorization, however, is contrary to the exceptional nature of the privilege. Executive privilege, as already discussed, is recognized with respect to information the confidential nature of which is *crucial* to the fulfillment of the unique role and responsibilities of the executive branch, or in those instances where exemption from disclosure is *necessary* to the discharge of *highly important* executive responsibilities. The doctrine of executive privilege is thus premised on the fact that certain information must, **as a matter of necessity**, be kept confidential in pursuit of the public interest. The privilege being, by definition, an exemption from the obligation to disclose information, in this case to Congress, the necessity must be of such high degree as to outweigh the public interest in enforcing that obligation in a particular case.
>
> In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the President the power to invoke the privilege. She may of course authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is "By order of the President," which means that he personally consulted with her. The privilege

[20] *Supra* note 11 at pp. 68-69.

being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. There is even less reason to uphold such authorization in the instant case where the authorization is not explicit but by mere silence. Section 3, in relation to Section 2(b), is further invalid on this score.

The constitutional infirmity found in the blanket authorization to invoke executive privilege granted by the President to executive officials in Sec. 2(b) of E.O. No. 464 does not obtain in this case.

In this case, it was the President herself, through Executive Secretary Ermita, who invoked executive privilege on a specific matter involving an executive agreement between the Philippines and China, which was the subject of the three (3) questions propounded to petitioner Neri in the course of the Senate Committees' investigation. Thus, the factual setting of this case markedly differs from that passed upon in *Senate v. Ermita*.

Moreover, contrary to the claim of respondents, the Decision in this present case hews closely to the ruling in *Senate v. Ermita*,[21] to wit:

Executive privilege

The phrase "executive privilege" is not new in this jurisdiction. It has been used even prior to the promulgation of the 1986 Constitution. Being of American origin, it is best understood in light of how it has been defined and used in the legal literature of the United States.

Schwart defines executive privilege as **"the power of the Government to withhold information from the public, the courts, and the Congress.** Similarly, Rozell defines it as "the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public." x x x In this jurisdiction, the doctrine of executive privilege was recognized by this Court in *Almonte v. Vasquez. Almonte* used the term in reference to the same privilege subject of *Nixon*. It quoted the following portion of the *Nixon* decision which explains the basis for the privilege:

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[21] *Id.*, at pp. 45-46.

"The expectation of a President to the ***confidentiality of his conversations and correspondences,*** **like the claim of confidentiality of judicial deliberations,** for example, he has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. *A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.* **These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution** x x x" (Emphasis and italics supplied)

Clearly, therefore, even *Senate v. Ermita* adverts to "a presumptive privilege for Presidential communication," which was recognized early on in *Almonte v. Vasquez*. To construe the passage in *Senate v. Ermita* adverted to in the Motion for Reconsideration of respondent Committees, referring to the non-existence of a "presumptive authorization" of an executive official, to mean that the "presumption" in favor of executive privilege "inclines heavily against executive secrecy and in favor of disclosure" is to distort the ruling in the *Senate v. Ermita* and make the same engage in self-contradiction.

Senate v. Ermita[22] expounds on the constitutional underpinning of the relationship between the Executive Department and the Legislative Department to explain why there should be no implied authorization or presumptive authorization to invoke executive privilege by the President's subordinate officials, as follows:

When Congress exercises its power of inquiry, the only way for department heads to exempt themselves therefrom is by a valid claim of privilege. They are not exempt by the mere fact that they are department heads. Only one executive *official* may be exempted from this power – the President on whom executive power is vested, hence, beyond the reach of Congress except through the power of impeachment. It is based on he being the highest official of the

[22] *Id.*, at p. 58.

executive branch, and the due respect accorded to a co-equal branch of governments which is sanctioned by a long-standing custom. (Underscoring supplied)

Thus, if what is involved is the presumptive privilege of presidential communications when invoked by the President on a matter clearly within the domain of the Executive, the said presumption dictates that the same be recognized and be given preference or priority, in the absence of proof of a compelling or critical need for disclosure by the one assailing such presumption. Any construction to the contrary will render meaningless the presumption accorded by settled jurisprudence in favor of executive privilege. In fact, *Senate v. Ermita* reiterates jurisprudence citing "the considerations justifying a presumptive privilege for Presidential communications."[23]

II

There Are Factual and Legal Bases to Hold that the Communications Elicited by the Three (3) Questions Are Covered by Executive Privilege

Respondent Committees claim that the communications elicited by the three (3) questions are not covered by executive privilege because the elements of the **presidential communications privilege** are not present.

A. The power to enter into an executive agreement is a "quintessential and non-delegable presidential power."

First, respondent Committees contend that the power to secure a foreign loan does not relate to a "quintessential and non-delegable presidential power," because the Constitution does not vest it in the President alone, but also in the Monetary Board which is required to give its prior concurrence and to report to Congress.

This argument is unpersuasive.

The fact that a power is subject to the concurrence of another entity does not make such power less executive. "Quintessential"

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[23] *Id.*, at p. 50.

is defined as the most perfect embodiment of something, the concentrated essence of substance.[24] On the other hand, "non-delegable" means that a power or duty cannot be delegated to another or, even if delegated, the responsibility remains with the obligor.[25] The power to enter into an executive agreement is in essence an executive power. This authority of the President to enter into *executive agreements* without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence.[26] Now, the fact that the President has to secure the prior concurrence of the Monetary Board, which shall submit to Congress a complete report of its decision before contracting or guaranteeing foreign loans, does not diminish the executive nature of the power.

The inviolate doctrine of separation of powers among the legislative, executive and judicial branches of government by no means prescribes absolute autonomy in the discharge by each branch of that part of the governmental power assigned to it by the sovereign people. There is the corollary doctrine of checks and balances, which has been carefully calibrated by the Constitution to temper the official acts of each of these three branches. Thus, by analogy, the fact that certain legislative acts require action from the President for their validity does not render such acts less legislative in nature. A good example is the power to pass a law. Article VI, Section 27 of the Constitution mandates that every bill passed by Congress shall, before it becomes a law, be presented to the President who shall approve or veto the same. The fact that the approval or vetoing of the bill is lodged with the President does not render the power to pass law executive in nature. This is because the power to pass law is generally a quintessential and non-delegable

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[24] *Webster Encyclopedic Unabridged Dictionary*, Gramercy Books 1994, p. 1181.

[25] Business Dictionary, http://www.businessdictionary.com/definition/non-delegable-duty.html

[26] *Usaffe Veterans Association, Inc. v. Treasurer of the Philippines, et al.* (105 Phil. 1030, 1038); See also *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.* G.R. No. L-31092, February 27, 1987,148 SCRA 36, 39.

power of the Legislature. In the same vein, the executive power to enter or not to enter into a contract to secure foreign loans does not become less executive in nature because of conditions laid down in the Constitution. The final decision in the exercise of the said executive power is still lodged in the Office of the President.

B. The "doctrine of operational proximity" was laid down precisely to limit the scope of the presidential communications privilege but, in any case, it is not conclusive.

Second, respondent Committees also seek reconsideration of the application of the "doctrine of operational proximity" for the reason that "it maybe misconstrued to expand the scope of the presidential communications privilege to communications between those who are 'operationally proximate' to the President but who may have "no direct communications with her."

It must be stressed that the doctrine of "operational proximity" was laid down in *In re: Sealed Case*[27] precisely to limit the scope of the presidential communications privilege. The U.S. court was aware of the dangers that a limitless extension of the privilege risks and, therefore, carefully cabined its reach by explicitly confining it to White House staff, and not to staffs of the agencies, and then only to White House staff that has "operational proximity" to direct presidential decision-making, thus:

> We are aware that such an extension, unless carefully circumscribed to accomplish the purposes of the privilege, could pose a significant risk of expanding to a large swath of the executive branch a privilege that is bottomed on a recognition of the unique role of the President. In order to limit this risk, the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President's decision-making process is adequately protected. **Not every person who plays a role in the development of presidential advice, no matter how remote and**

[27] No. 96-3124, June 17, 1997, 121 F.3d 729,326 U.S. App. D.C. 276.

removed from the President, can qualify for the privilege. In particular, the privilege should not extend to staff outside the White House in executive branch agencies. Instead, the privilege should apply only to communications authored or solicited and received by those members of an immediate White House advisor's staff who have broad and significant responsibility for investigation and formulating the advice to be given the President on the particular matter to which the communications relate. **Only communications at that level are close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers. *See* AAPS, 997 F.2d at 910 (it is "operational proximity" to the President that matters in determining whether "[t]he President's confidentiality interests" is implicated).** (Emphasis supplied)

In the case at bar, the danger of expanding the privilege "to a large swath of the executive branch" (a fear apparently entertained by respondents) is absent because the official involved here is a member of the Cabinet, thus, properly within the term "advisor" of the President; in fact, her alter ego and a member of her official family. Nevertheless, in circumstances in which the official involved is far too remote, this Court also mentioned in the Decision the **organizational test** laid down in *Judicial Watch, Inc. v. Department of Justice*.[28] This goes to show that the operational proximity test used in the Decision is not considered conclusive in every case. In determining which test to use, the main consideration is to limit the availability of executive privilege only to officials who stand proximate to the President, not only by reason of their function, but also by reason of their positions in the Executive's organizational structure. Thus, respondent Committees' fear that the scope of the privilege would be unnecessarily expanded with the use of the operational proximity test is unfounded.

C. The President's claim of executive privilege is not merely based on a generalized interest; and in balancing respondent Committees' and the President's clashing

[28] 365 F 3d. 1108, 361 U.S. App. D.C. 183, 64 Fed. R. Evid. Serv.141.

interests, the Court did not disregard the 1987 Constitutional provisions on government transparency, accountability and disclosure of information.

Third, respondent Committees claim that the Court erred in upholding the President's invocation, through the Executive Secretary, of executive privilege because **(a)** between respondent Committees' specific and demonstrated need and the President's generalized interest in confidentiality, there is a need to strike the balance in favor of the former; and **(b)** in the balancing of interest, the Court disregarded the provisions of the 1987 Philippine Constitution on government transparency, accountability and disclosure of information, specifically, Article III, Section 7;[29] Article II, Sections 24[30] and 28;[31] Article XI, Section 1;[32] Article XVI, Section 10;[33]

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[29] **Article III, Sec. 7.** 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 records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[30] **Article II, Sec. 24.** The State recognizes the vital role of communication and information in nation-building.

[31] **Article II, Sec. 28.** 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.

[32] **Article XI, Sec. 1.** Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[33] **Article XVI, Sec. 10.** The State shall provide the policy environment for the full development of Filipino capability and the emergence of communications 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.

Article VII, Section 20;[34] and Article XII, Sections 9,[35] 21,[36] and 22.[37]

It must be stressed that the President's claim of executive privilege is not merely founded on her generalized interest in confidentiality. The Letter dated November 15, 2007 of Executive Secretary Ermita specified **presidential communications privilege** in relation to **diplomatic and economic relations with another sovereign nation** as the bases for the claim. Thus, the Letter stated:

The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China. Given the confidential nature in which this information were conveyed to the President, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect. *(emphasis supplied)*

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[34] **Article VII, Sec. 20.** The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or government-controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

[35] **Article XII, Sec. 9.** The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development. Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

[36] **Article XII, Sec. 21.** Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

[37] **Article XII, Sec. 22.** Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

Even in *Senate v. Ermita,* it was held that Congress must not require the Executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect. This is a matter of respect for a coordinate and co-equal department.

It is easy to discern the danger that goes with the disclosure of the President's communication with her advisor. The NBN Project involves a foreign country as a party to the agreement. It was actually a product of the meeting of minds between officials of the Philippines and China. Whatever the President says about the agreement – particularly while official negotiations are ongoing – are matters which China will surely view with particular interest. There is danger in such kind of exposure. It could adversely affect our diplomatic as well as economic relations with the People's Republic of China. We reiterate the importance of secrecy in matters involving foreign negotiations as stated in *United States v. Curtiss-Wright Export Corp.*,[38] thus:

> The nature of foreign negotiations requires caution, and their success must often depend on secrecy, and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic, for this might have a pernicious influence on future negotiations or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which the body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand and to have as a matter of course all the papers respecting a negotiation with a foreign power would be to establish a dangerous precedent.

US jurisprudence clearly guards against the dangers of allowing Congress access to <u>all</u> papers relating to a negotiation with a foreign power. In this jurisdiction, the recent case of *Akbayan Citizens Action Party, et al. v. Thomas G. Aquino, et al.*[39]

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[38] 14 F. Supp. 230, 299 U.S. 304 (1936).

[39] G.R. No. 170516, promulgated July 16, 2008.

upheld the privileged character of diplomatic negotiations. In *Akbayan*, the Court stated:

Privileged character of diplomatic negotiations

The privileged character of diplomatic negotiations has been recognized in this jurisdiction. In discussing valid limitations on the right to information, the Court in *Chavez v. PCGG* held that "information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest." Even earlier, the same privilege was upheld in *People's Movement for Press Freedom (PMPF) v. Manglapus* wherein the Court discussed the reasons for the privilege in more precise terms.

In *PMPF v. Manglapus*, the therein petitioners were seeking information from the President's representatives on the state of the then on-going negotiations of the RP-US Military Bases Agreement. The Court denied the petition, stressing that "**secrecy of negotiations with foreign countries is not violative** of the constitutional provisions of freedom of speech or of the press nor **of the freedom of access to information**." The Resolution went on to state, thus:

> **The nature of diplomacy requires centralization of authority and expedition of decision which are inherent in executive action. Another essential characteristic of diplomacy is its confidential nature.** Although much has been said about "open" and "secret" diplomacy, with disparagement of the latter, Secretaries of State Hughes and Stimson have clearly analyzed and justified the practice. In the words of Mr. Stimson:
>
> > "**A complicated negotiation …cannot be carried through without many, many private talks and discussion, man to man; many tentative suggestions and proposals. Delegates from other countries come and tell you in confidence of their troubles at home and of their differences with other countries and with other delegates; they tell you of what they would do under certain circumstances and would not do under other circumstances… If these reports… should become public… who would ever trust American Delegations in**

> **another conference?** (United States Department of State, Press Releases, June 7, 1930, pp. 282-284)

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There is frequent criticism of the secrecy in which negotiation with foreign powers on nearly all subjects is concerned. This, it is claimed, is incompatible with the substance of democracy. As expressed by one writer, "It can be said that there is no more rigid system of silence anywhere in the world." (E.J. Young, Looking Behind the Censorship, J. B. Lipincott Co., 1938) President Wilson in starting his efforts for the conclusion of the World War declared that we must have "open covenants, openly arrived at." He quickly abandoned his thought.

No one who has studied the question believes that such a method of publicity is possible. **In the moment that negotiations are started, pressure groups attempt to "muscle in." An ill-timed speech by one of the parties or a frank declaration of the concession which are exacted or offered on both sides would quickly lead to a widespread propaganda to block the negotiations. After a treaty has been drafted and its terms are fully published, there is ample opportunity for discussion before it is approved.** (The New American Government and Its Works, James T. Young, 4th Edition, p. 194) (Emphasis and underscoring supplied)

Still in *PMPF v. Manglapus*, the Court adopted the doctrine in *U.S. v. Curtiss-Wright Export Corp.* that the President is the sole organ of the nation in its negotiations with foreign countries, *viz*:

> "x x x In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great arguments of March 7, 1800, in the House of Representatives, **"The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."** Annals, 6th Cong., col. 613… (Emphasis supplied; underscoring in the original)

Considering that the information sought through the three (3) questions subject of this Petition involves the President's dealings with a foreign nation, with more reason, this Court is wary of approving the view that Congress may peremptorily inquire into not only official, documented acts of the President but even her confidential and informal discussions with her close advisors on the pretext that said questions serve some vague legislative need. Regardless of who is in office, this Court can easily foresee unwanted consequences of subjecting a Chief Executive to unrestricted congressional inquiries done with increased frequency and great publicity. No Executive can effectively discharge constitutional functions in the face of intense and unchecked legislative incursion into the core of the President's decision-making process, which inevitably would involve her conversations with a member of her Cabinet.

With respect to respondent Committees' invocation of constitutional prescriptions regarding the right of the people to information and public accountability and transparency, the Court finds nothing in these arguments to support respondent Committees' case.

There is no debate as to the importance of the constitutional right of the people to information and the constitutional policies on public accountability and transparency. These are the twin postulates vital to the effective functioning of a democratic government. The citizenry can become prey to the whims and caprices of those to whom the power has been delegated if they are denied access to information. And the policies on public accountability and democratic government would certainly be mere empty words if access to such information of public concern is denied.

In the case at bar, this Court, in upholding executive privilege with respect to three (3) specific questions, did not in any way curb the public's right to information or diminish the importance of public accountability and transparency.

This Court did not rule that the Senate has no power to investigate the NBN Project in aid of legislation. There is nothing in the assailed Decision that prohibits respondent Committees

from inquiring into the NBN Project. They could continue the investigation and even call petitioner Neri to testify again. He himself has repeatedly expressed his willingness to do so. Our Decision merely excludes from the scope of respondents' investigation the three (3) questions that elicit answers covered by executive privilege and rules that petitioner cannot be compelled to appear before respondents to answer the said questions. We have discussed the reasons why these answers are covered by executive privilege. That there is a recognized public interest in the confidentiality of such information is a recognized principle in other democratic States. To put it simply, the right to information is not an absolute right.

Indeed, the constitutional provisions cited by respondent Committees do not espouse an absolute right to information. By their wording, the intention of the Framers to subject such right to the regulation of the law is unmistakable. The highlighted portions of the following provisions show the obvious limitations on the right to information, thus:

Article III, Sec. 7. 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 records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, **subject to such limitations as may be provided by law**.

Article II, Sec. 28. **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. *(Emphasis supplied)*

In *Chavez v. Presidential Commission on Good Government*,[40] it was stated that there are no specific laws prescribing the exact limitations within which the right may be exercised or the correlative state duty may be obliged. Nonetheless, it enumerated the recognized restrictions to such rights, among them: **(1)** national security matters, **(2)** trade secrets and banking transactions, **(3)** criminal matters, and **(4)** other

[40] *Supra* note 14.

confidential information. National security matters include state secrets regarding military and diplomatic matters, as well as information on inter-government exchanges prior to the conclusion of treaties and executive agreements. **It was further held that even where there is no need to protect such state secrets, they must be "examined in strict confidence and given scrupulous protection."**

Incidentally, the right primarily involved here is the right of respondent Committees to obtain information allegedly *in aid of legislation,* not the people's right to public information. This is the reason why we stressed in the assailed Decision the distinction between these two rights. As laid down in *Senate v. Ermita,* "the demand of a citizen for the production of documents pursuant to his right to information does not have the same obligatory force as a *subpoena duces tecum* issued by Congress" and "neither does the right to information grant a citizen the power to exact testimony from government officials." As pointed out, these rights belong to Congress, not to the individual citizen. It is worth mentioning at this juncture that the parties here are respondent Committees and petitioner Neri and that there was no prior request for information on the part of any individual citizen. This Court will not be swayed by attempts to blur the distinctions between the Legislature's right to information in a legitimate legislative inquiry and the public's right to information.

For clarity, it must be emphasized that the assailed Decision did not enjoin respondent Committees from inquiring into the NBN Project. All that is expected from them is to respect matters that are covered by executive privilege.

III.

Respondent Committees Failed to Show That the Communications Elicited by the Three Questions Are Critical to the Exercise of their Functions

In their Motion for Reconsideration, respondent Committees devote an unusually lengthy discussion on the purported legislative nature of their entire inquiry, as opposed to an oversight inquiry.

At the outset, it must be clarified that the Decision did not pass upon the nature of respondent Committees' inquiry into the NBN Project. To reiterate, this Court recognizes respondent Committees' power to investigate the NBN Project in aid of legislation. However, this Court cannot uphold the view that when a constitutionally guaranteed privilege or right is validly invoked by a witness in the course of a legislative investigation, the legislative purpose of respondent Committees' questions can be sufficiently supported by the expedient of mentioning statutes and/or pending bills to which their inquiry as a whole may have relevance. The jurisprudential test laid down by this Court in past decisions on executive privilege is that the presumption of privilege can only be overturned by **a showing of compelling need** for disclosure of the information covered by executive privilege.

In the Decision, the majority held that "there is no adequate showing of a compelling need that would justify the limitation of the privilege and of the unavailability of the information elsewhere by an appropriate investigating authority." In the Motion for Reconsideration, respondent Committees argue that the information elicited by the three (3) questions are necessary in the discharge of their legislative functions, among them, **(a)** to consider the three (3) pending Senate Bills, and **(b)** to curb graft and corruption.

We remain unpersuaded by respondents' assertions.

In *U.S. v. Nixon*, the U.S. Court held that executive privilege is subject to balancing against other interests and it is necessary to resolve the competing interests in a manner that would preserve the essential functions of each branch. There, the Court weighed between presidential privilege and the legitimate claims of the judicial process. In giving more weight to the latter, the Court ruled that the President's generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.

The Nixon Court ruled that an absolute and unqualified privilege would stand in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions. The

said Court further ratiocinated, through its ruling extensively quoted in the Honorable Chief Justice Puno's dissenting opinion, as follows:

"... this presumptive privilege must be considered in light of our historic commitment to the rule of law. This is nowhere more profoundly manifest than in our view that 'the twofold aim (of criminal justice) is that guild shall not escape or innocence suffer.' *Berger v. United States*, 295 U.S., at 88, 55 S.Ct., at 633. We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. **The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available** for the production of evidence needed either by the prosecution or by the defense.

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The right to the production of all evidence at a criminal trial similarly has constitutional dimensions. The Sixth Amendment explicitly confers upon every defendant in a criminal trial the **right 'to be confronted with the witness against him' and 'to have compulsory process** for obtaining witnesses in his favor.' Moreover, the Fifth Amendment also **guarantees that no person shall be deprived of liberty without due process of law.** It is the **manifest duty of the courts to vindicate those guarantees**, and to accomplish that it is essential that all relevant and admissible evidence be produced.

In this case **we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of the President's responsibilities against the inroads of such a privilege on the fair administration of criminal justice**. *(emphasis supplied)*

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... the allowance of the privilege to withhold evidence that is **demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function**

of the courts. A **President's acknowledged need for confidentiality** in the communications of his office is **general** in nature, whereas the **constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice.** Without access to specific facts a criminal prosecution may be **totally frustrated**. The **President's broad interest in confidentiality of communication** will **not be vitiated** by **disclosure of a limited number of conversations preliminarily shown to have some bearing** on the pending criminal cases.

We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the **generalized interest in confidentiality**, it **cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.** The generalized assertion of privilege must yield to the **demonstrated, specific need** for evidence in a pending **criminal trial.** *(emphasis supplied)*

In the case at bar, we are not confronted with a court's need for facts in order to adjudge liability in a criminal case but rather with the Senate's need for information in relation to its legislative functions. This leads us to consider once again just how critical is the subject information in the discharge of respondent Committees' functions. The burden to show this is on the respondent Committees, since they seek to intrude into the sphere of competence of the President in order to gather information which, according to said respondents, would "aid" them in crafting legislation.

Senate Select Committee on Presidential Campaign Activities v. Nixon[41] expounded on the nature of a legislative inquiry in aid of legislation in this wise:

The sufficiency of the Committee's showing of need has come to depend, therefore, entirely on whether the subpoenaed materials are critical to the performance of its legislative functions. There is a clear difference between Congress' legislative tasks and the responsibility of a grand jury, or any institution engaged in like functions. **While fact-finding by a legislative committee is**

[41] *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974).

undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events; Congress frequently legislates on the basis of conflicting information provided in its hearings. In contrast, the responsibility of the grand jury turns entirely on its ability to determine whether there is probable cause to believe that certain named individuals did or did not commit specific crimes. If, for example, as in *Nixon v. Sirica*, one of those crimes is perjury concerning the content of certain conversations, the grand jury's need for the most precise evidence, the exact text of oral statements recorded in their original form, is undeniable. **We see no comparable need in the legislative process, at least not in the circumstances of this case.** Indeed, whatever force there might once have been in the Committee's argument that the subpoenaed materials are necessary to its legislative judgments has been substantially undermined by subsequent events. (Emphasis supplied)

Clearly, the need for hard facts in crafting legislation cannot be equated with the compelling or demonstratively critical and specific need for facts which is so essential to the judicial power to adjudicate actual controversies. Also, the bare standard of "pertinency" set in *Arnault* cannot be lightly applied to the instant case, which unlike *Arnault* involves a conflict between two (2) separate, co-equal and coordinate Branches of the Government.

Whatever test we may apply, the starting point in resolving the conflicting claims between the Executive and the Legislative Branches is the recognized existence of the presumptive presidential communications privilege. This is conceded even in the Dissenting Opinion of the Honorable Chief Justice Puno, which states:

A hard look at ***Senate v. Ermita*** ought to yield the conclusion that it bestowed a qualified presumption in favor of the Presidential communications privilege. As shown in the previous discussion, ***U.S. v. Nixon***, as well as the other related Nixon cases ***Sirica*** and ***Senate Select Committee on Presidential Campaign Activities, et al., v. Nixon*** in the D.C. Court of Appeals, as well as subsequent cases **all recognize that there is a presumptive privilege in favor of Presidential communications**. The **Almonte case** quoted ***U.S. v. Nixon***

and **recognized a presumption in favor of confidentiality** of Presidential communications.

The presumption in favor of Presidential communications puts the burden on the respondent Senate Committees to overturn the presumption by demonstrating their specific need for the information to be elicited by the answers to the three (3) questions subject of this case, to enable them to craft legislation. Here, there is simply a generalized assertion that the information is pertinent to the exercise of the power to legislate and a broad and non-specific reference to pending Senate bills. It is not clear what matters relating to these bills could not be determined without the said information sought by the three (3) questions. As correctly pointed out by the Honorable Justice Dante O. Tinga in his Separate Concurring Opinion:

…If respondents are operating under the premise that the president and/or her executive officials have committed wrongdoings that need to be corrected or prevented from recurring by remedial legislation, the answer to those three questions will not necessarily bolster or inhibit respondents from proceeding with such legislation. They could easily presume the worst of the president in enacting such legislation.

For sure, a factual basis for situations covered by bills is not critically needed before legislatives bodies can come up with relevant legislation unlike in the adjudication of cases by courts of law. Interestingly, during the Oral Argument before this Court, the counsel for respondent Committees impliedly admitted that the Senate could still come up with legislations even without petitioner answering the three (3) questions. In other words, the information being elicited is not so critical after all. Thus:

CHIEF JUSTICE PUNO

> So can you tell the Court how critical are these questions to the lawmaking function of the Senate. For instance, question Number 1 whether the President followed up the NBN project. According to the other counsel this question has already been asked, is that correct?

ATTY. AGABIN

Well, the question has been asked but it was not answered, Your Honor.

CHIEF JUSTICE PUNO

Yes. But my question is how critical is this to the lawmaking function of the Senate?

ATTY. AGABIN

I believe it is critical, Your Honor.

CHIEF JUSTICE PUNO

Why?

ATTY. AGABIN

For instance, with respect to the proposed Bill of Senator Miriam Santiago, she would like to indorse a Bill to include Executive Agreements had been used as a device to the circumventing the Procurement Law.

CHIEF JUSTICE PUNO

But the question is just following it up.

ATTY. AGABIN

I believe that may be the initial question, Your Honor, because if we look at this problem in its factual setting as counsel for petitioner has observed, there are intimations of a bribery scandal involving high government officials.

CHIEF JUSTICE PUNO

Again, about the second question, were you dictated to prioritize this ZTE, is that critical to the lawmaking function of the Senate? Will it result to the failure of the Senate to cobble a Bill without this question?

ATTY. AGABIN

I think it is critical to lay the factual foundations for a proposed amendment to the Procurement Law, Your Honor, because the petitioner had already testified that he was offered a ₱200 Million bribe, so if he was offered a ₱200 Million bribe it is possible that other government officials who had something to do with the

approval of the contract would be offered the same amount of bribes.

CHIEF JUSTICE PUNO

Again, that is speculative.

ATTY. AGABIN

That is why they want to continue with the investigation, Your Honor.

CHIEF JUSTICE PUNO

How about the third question, whether the President said to go ahead and approve the project after being told about the alleged bribe. How critical is that to the lawmaking function of the Senate? And the question is may they craft a Bill a remedial law without forcing petitioner Neri to answer this question?

ATTY. AGABIN

Well, **they can craft it**, Your Honor, based on mere speculation. And sound legislation requires that a proposed Bill should have some basis in fact.[42]

The failure of the counsel for respondent Committees to pinpoint the specific need for the information sought or how the withholding of the information sought will hinder the accomplishment of their legislative purpose is very evident in the above oral exchanges. Due to the failure of the respondent Committees to successfully discharge this burden, the presumption in favor of confidentiality of presidential communication stands. The implication of the said presumption, like any other, is to dispense with the burden of proof as to whether the disclosure will significantly impair the President's performance of her function. Needless to state this is assumed, by virtue of the presumption.

Anent respondent Committees' bewailing that they would have to "speculate" regarding the questions covered by the privilege, this does not evince a compelling need for the information sought. Indeed, *Senate Select Committee on Presidential*

[42] TSN, Oral Argument, March 4, 2008, pp. 417 - 422.

Campaign Activities v. Nixon[43] held that while fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability than on a precise reconstruction of past events. It added that, normally, Congress legislates on the basis of conflicting information provided in its hearings. We cannot subscribe to the respondent Committees' self-defeating proposition that without the answers to the three (3) questions objected to as privileged, the distinguished members of the respondent Committees cannot intelligently craft legislation.

Anent the function to curb graft and corruption, it must be stressed that respondent Committees' need for information in the exercise of this function is not as compelling as in instances when the purpose of the inquiry is legislative in nature. This is because curbing graft and corruption is merely an oversight function of Congress.[44] And if this is the primary objective of respondent Committees in asking the three (3) questions covered by privilege, it may even contradict their claim that their purpose is legislative in nature and not oversight. In any event, whether or not investigating graft and corruption is a legislative or oversight function of Congress, respondent Committees' investigation cannot transgress bounds set by the Constitution.

In *Bengzon, Jr. v. Senate Blue Ribbon Committee*,[45] this Court ruled:

The "allocation of constitutional boundaries" is a task that this Court must perform under the Constitution. Moreover, as held in a recent case, "the political question doctrine neither interposes an obstacle to judicial determination of the rival claims. The jurisdiction to delimit constitutional boundaries has been given to this Court. It cannot abdicate that obligation mandated by the 1987 Constitution,

[43] *Supra* note 41 at pp. 725, 731-32.

[44] *Senate Select Committee on Presidential Campaign Activities v. Nixon* held that Congress' "asserted power to investigate and inform" was, standing alone, insufficient to overcome a claim of privilege and so refused to enforce the congressional subpoena. *Id.*

[45] G.R. No. 89914, November 20, 1991, 203 SCRA 767.

although said provision by no means does away with the applicability of the principle in appropriate cases.[46] (Emphasis supplied)

There, the Court further ratiocinated that "**the contemplated inquiry** by respondent Committee is not really 'in aid of legislation' because it **is not related to a purpose within the jurisdiction of Congress, since the aim of the investigation is to find out whether or not the relatives of the President or Mr. Ricardo Lopa had violated Section 5 of R.A. No. 3019, the *Anti-Graft and Corrupt Practices Act*, a matter that appears more within the province of the courts rather than of the Legislature**."[47] (Emphasis and underscoring supplied)

The general thrust and the tenor of the three (3) questions is to trace the alleged bribery to the Office of the President.[48]

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[46] *Id.*, at p. 776.

[47] *Id.*, at p. 783.

[48] The dialogue between petitioner and Senator Lacson is a good illustration, thus:

SEN. LACSON.	**Did you report the attempted bribe offer to the President?**
MR. NERI.	**I mentioned it to the President, Your Honor.**
SEN. LACSON.	**What did she tell you?**
MR. NERI.	**She told me, 'Don't accept it."**
SEN. LACSON.	**And then, that's it?**
MR. NERI.	**Yeah, because we had other things to discuss during that time.**
SEN. LACSON.	**And then after the President told you, "Do not accept it," what did she do? How did you report it to the President? In the same context that it was offered to you?**
MR. NERI.	**I remember it was over the phone, Your Honor.**
SEN. LACSON.	***Hindi nga. Papaano ninyo ni-report, 'Inoperan (offer) ako ng bribe na ₱200 million ni Chairman Abalos or what? How did you report it to her?***
MR. NERI.	**Well, I said, 'Chairman Abalos offered me 200 million for this.'**

While it may be a worthy endeavor to investigate the potential culpability of high government officials, including the President, in a given government transaction, it is simply not a task for

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SEN. LACSON.	**Okay. That clear?**
MR. NERI.	**I'm sorry.**
SEN. LACSON.	**That clear?**
MR. NERI.	**I think so, Your Honor.**
SEN. LACSON.	**And after she told you. 'Do not accept it,' what did she do?**
MR. NERI.	**I don't know anymore, Your Honor, but I understand PAGC investigated it or—I was not privy to any action of PAGC.**
SEN. LACSON.	**You are not privy to any recommendation submitted by PAGC?**
MR. NERI.	**No, Your Honor.**
SEN. LACSON.	**How did she react, was she shocked also like you or was it just casually responded to as, "Don't accept."**
MR. NERI.	**It was over the phone, Your Honor, so I cannot see her facial expression.**
SEN. LACSON.	**Did it have something to do with your change of heart so to speak – your attitude towards the NBN project as proposed by ZTE?**
MR. NERI.	**Can you clarify, Your Honor, I don't understand the change of heart.**
SEN. LACSON.	Because, on March 26 and even on November 21, as early as November 21, 2006 during the NEDA Board Cabinet Meeting, you were in agreement with the President that it should be "pay as you use" and not take or pay. There should be no government subsidy and it should be BOT or BOO or any similar scheme and **you were in agreement, you were not arguing. The President was not arguing with you, you were not arguing with the President, so you were in agreement** and all of a sudden *nauwi tayo doon sa lahat ng* — and proposal all in violation of the President's Guidelines and in violation of what you thought of the project?
MR. NERI.	**Well, we defer to the implementing agency's choice as to how to implement the project.**

the Senate to perform. The role of the Legislature is to make laws, not to determine anyone's guilt of a crime or wrongdoing. Our Constitution has not bestowed upon the Legislature the latter role. Just as the Judiciary cannot legislate, neither can the Legislature adjudicate or prosecute.

Respondent Committees claim that they are conducting an inquiry *in aid of legislation* and a "search for truth," which in respondent Committees' view appears to be equated with the search for persons responsible for "anomalies" in government contracts.

No matter how noble the intentions of respondent Committees are, they cannot assume the power reposed upon our prosecutorial bodies and courts. The determination of who is/are liable for a crime or illegal activity, the investigation of the role played by each official, the determination of who should be haled to court for prosecution and the task of coming up with conclusions and finding of facts regarding anomalies, especially the determination of criminal guilt, are not functions of the Senate. Congress is neither a law enforcement nor a trial agency. Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, *i.e.* legislation. Investigations conducted solely to gather incriminatory evidence and "punish" those investigated are indefensible. There is no Congressional power to expose for the sake of exposure.[49] In this regard, the pronouncement in *Barenblatt v. United States*[50] is instructive, thus:

> **Broad as it is, the power is not, however, without limitations.** Since Congress may only investigate into the areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. (Emphasis supplied.)

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[49] *Watkins v. United States,* 354 U.S. 178 (1957).

[50] 360 U.A. 109, 3 L Ed. 2d 1115, 69 S CT 1081 (1959).

At this juncture, it is important to stress that complaints relating to the NBN Project have already been filed against President Arroyo and other personalities before the Office of the Ombudsman. Under our Constitution, it is the Ombudsman who has the duty **"to investigate any act or omission of any public official, employee, office or agency when such act or omission appears to be illegal, unjust, improper, or inefficient."**[51] The Office of the Ombudsman is the body properly equipped by the Constitution and our laws to preliminarily determine whether or not the allegations of anomaly are true and who are liable therefor. The same holds true for our courts upon which the Constitution reposes the duty to determine criminal guilt with finality. Indeed, the rules of procedure in the Office of the Ombudsman and the courts are **well-defined** and **ensure that the constitutionally guaranteed rights of all persons, parties and witnesses alike, are protected and safeguarded**.

Should respondent Committees uncover information related to a possible crime in the course of their investigation, they have the constitutional duty to refer the matter to the appropriate agency or branch of government. Thus, the Legislature's need for information in an investigation of graft and corruption cannot be deemed compelling enough to pierce the confidentiality of information validly covered by executive privilege. As discussed above, the Legislature can still legislate on graft and corruption even without the information covered by the three (3) questions subject of the petition.

Corollarily, respondent Committees justify their rejection of petitioner's claim of executive privilege on the ground that there is no privilege when the information sought might involve a crime or illegal activity, **despite the absence of an administrative or judicial determination to that effect**. Significantly, however, in *Nixon v. Sirica*,[52] the showing required to overcome the presumption favoring confidentiality turned, **not on the nature of the presidential conduct that the subpoenaed material might reveal, but, instead, on the**

[51] Article XI, Section 13, par.1 of the Constitution.

[52] 487 F. 2d 700.

nature and appropriateness of the function in the performance of which the material was sought, and the degree to which the material was necessary to its fulfillment.

Respondent Committees assert that *Senate Select Committee on Presidential Campaign Activities v. Nixon* does not apply to the case at bar because, unlike in the said case, no impeachment proceeding has been initiated at present. The Court is not persuaded. While it is true that no impeachment proceeding has been initiated, however, complaints relating to the NBN Project have already been filed against President Arroyo and other personalities before the Office of the Ombudsman. As the Court has said earlier, the prosecutorial and judicial arms of government are the bodies equipped and mandated by the Constitution and our laws to determine whether or not the allegations of anomaly in the NBN Project are true and, if so, who should be prosecuted and penalized for criminal conduct.

Legislative inquiries, unlike court proceedings, are not subject to the exacting standards of evidence essential to arrive at accurate factual findings to which to apply the law. Hence, Section 10 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provides that "technical rules of evidence applicable to judicial proceedings which do not affect substantive rights need not be observed by the Committee." Court rules which prohibit leading, hypothetical, or repetitive questions or questions calling for a hearsay answer, to name a few, do not apply to a legislative inquiry. Every person, from the highest public official to the most ordinary citizen, has the right to be presumed innocent until proven guilty in proper proceedings by a competent court or body.

IV

Respondent Committees Committed Grave Abuse of Discretion in Issuing the Contempt Order

Respondent Committees insist that they did not commit grave abuse of discretion in issuing the contempt order because **(1)** there is no legitimate claim of executive privilege; **(2)** they did not violate the requirements laid down in *Senate v. Ermita;*

(3) they issued the contempt order in accordance with their internal *Rules*; **(4)** they did not violate the requirement under Article VI, Section 21 of the Constitution requiring the publication of their *Rules*; and **(5)** their issuance of the contempt order is not arbitrary or precipitate.

We reaffirm our earlier ruling.

The legitimacy of the claim of executive privilege having been fully discussed in the preceding pages, we see no reason to discuss it once again.

Respondent Committees' second argument rests on the view that the ruling in *Senate v. Ermita,* requiring invitations or subpoenas to contain the "possible needed statute which prompted the need for the inquiry" along with the "usual indication of the subject of inquiry and the questions relative to and in furtherance thereof" is not provided for by the Constitution and is merely an *obiter dictum*.

On the contrary, the Court sees the rationale and necessity of compliance with these requirements.

An unconstrained congressional investigative power, like an unchecked Executive, generates its own abuses. Consequently, claims that the investigative power of Congress has been abused (or has the potential for abuse) have been raised many times.[53] Constant exposure to congressional subpoena takes its toll on the ability of the Executive to function effectively. The requirements set forth in *Senate v. Ermita* are modest mechanisms that would not unduly limit Congress' power. The

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[53] Professor Christopher Schroeder (then with the Clinton Justice Department), for example, labeled some of Congress's investigations as no more than "vendetta oversight" or "oversight that seems primarily interested in bringing someone down, usually someone close to the President or perhaps the President himself." Theodore Olson (the former Solicitor General in the Bush Justice Department), in turn, has argued that oversight has been used improperly by Congress to influence decision making of executive branch officials in a way that undercuts the President's power to assure that laws are faithfully executed. (Marshall, *The Limits on Congress' Authority to Investigate the President,* Marshall-Illinois.Doc, November 24, 2004.)

legislative inquiry must be confined to permissible areas and thus, prevent the "roving commissions" referred to in the U.S. case, *Kilbourn v. Thompson*.[54] Likewise, witnesses have their constitutional right to due process. They should be adequately informed what matters are to be covered by the inquiry. It will also allow them to prepare the pertinent information and documents. To our mind, these requirements concede too little political costs or burdens on the part of Congress when viewed *vis-à-vis* the immensity of its power of inquiry. The logic of these requirements is well articulated in the study conducted by William P. Marshall,[55] to wit:

> A second concern that might be addressed is that the current system allows committees to continually investigate the Executive without constraint. **One process solution addressing this concern is to require each investigation be tied to a clearly stated purpose**. At present, the charters of some congressional committees are so broad that virtually any matter involving the Executive can be construed to fall within their province. Accordingly, investigations can proceed without articulation of specific need or purpose. A requirement for a more precise charge in order to begin an inquiry should immediately work to limit the initial scope of the investigation and should also serve to contain the investigation once it is instituted. **Additionally, to the extent clear statements of rules cause legislatures to pause and seriously consider the constitutional implications of proposed courses of action in other areas, they would serve that goal in the context of congressional investigations as well**.
>
> **The key to this reform is in its details. A system that allows a standing committee to simply articulate its reasons to investigate pro forma does no more than imposes minimal drafting burdens. Rather, the system must be designed in a manner that imposes actual burdens on the committee to articulate its need for investigation and allows for meaningful debate about the merits of proceeding with the investigation.** *(Emphasis supplied)*

Clearly, petitioner's request to be furnished an advance copy of questions is a reasonable demand that should have been granted by respondent Committees.

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[54] 103 U.S. 168 (1880).

[55] Kenan Professor of Law, University of North Carolina.

Unfortunately, the Subpoena *Ad Testificandum* dated November 13, 2007 made no specific reference to any pending Senate bill. It did not also inform petitioner of the questions to be asked. As it were, the subpoena merely commanded him to "testify on what he knows relative to the subject matter under inquiry."

Anent the third argument, respondent Committees contend that their *Rules of Procedure Governing Inquiries in Aid of Legislation* (the "*Rules*") are beyond the reach of this Court. While it is true that this Court must refrain from reviewing the internal processes of Congress, as a co-equal branch of government, however, when a constitutional requirement exists, the Court has the duty to look into Congress' compliance therewith. We cannot turn a blind eye to possible violations of the Constitution simply out of courtesy. In this regard, the pronouncement in *Arroyo v. De Venecia*[56] is enlightening, thus:

> "Cases both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.
>
> *United States v. Ballin, Joseph & Co*., the rule was stated thus: 'The Constitution empowers each House to determine its rules of proceedings. **It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained**.'"

In the present case, the Court's exercise of its power of judicial review is warranted because there appears to be a clear abuse of the power of contempt on the part of respondent Committees. Section 18 of the *Rules* provides that:

> "The Committee, **by a vote of majority** of all its members, may punish for contempt any witness before it who disobey any order of the Committee or refuses to be sworn or to testify or to answer proper questions by the Committee or any of its members."*(Emphasis supplied)*

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[56] G.R. No. 127255, August 14, 1997, 277 SCRA 268.

In the assailed Decision, we said that there is a cloud of doubt as to the validity of the contempt order because during the deliberation of the three (3) respondent Committees, only seven (7) Senators were present. This number could hardly fulfill the majority requirement needed by respondent *Committee on Accountability of Public Officers and Investigations* which has a membership of seventeen (17) Senators and respondent *Committee on National Defense and Security* which has a membership of eighteen (18) Senators. With respect to respondent *Committee on Trade and Commerce* which has a membership of nine (9) Senators, only three (3) members were present.[57] These facts prompted us to quote in the Decision the exchanges between Senators Alan Peter Cayetano and Aquilino Pimentel, Jr. whereby the former raised the issue of lack of the required majority to deliberate and vote on the contempt order.

When asked about such voting during the March 4, 2008 hearing before this Court, Senator Francis Pangilinan stated that any defect in the committee voting had been cured because two-thirds of the Senators effectively signed for the Senate in plenary session.[58]

Obviously the deliberation of the respondent Committees that led to the issuance of the contempt order is flawed. Instead of being submitted to a full debate by all the members of the respondent Committees, the contempt order was prepared and thereafter presented to the other members for signing. As a result, the contempt order which was issued on January 30, 2008 was not a faithful representation of the proceedings that took place on said date. Records clearly show that not all of those who signed the contempt order were present during the January 30, 2008 deliberation when the matter was taken up.

Section 21, Article VI of the Constitution states that:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation **in accordance**

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[57] Transcript of the January 30, 2008 proceedings pp. 5-7.

[58] TSN, March 4, 2008, at pp. 529-530.

with its duly published rules of procedure. **The rights of person appearing in or affected by such inquiries shall be respected**. *(Emphasis supplied)*

All the limitations embodied in the foregoing provision form part of the witness' settled expectation. If the limitations are not observed, the witness' settled expectation is shattered. Here, how could there be a majority vote when the members in attendance are not enough to arrive at such majority? Petitioner has the right to expect that he can be cited in contempt only through a majority vote in a proceeding in which the matter has been fully deliberated upon. There is a greater measure of protection for the witness when the concerns and objections of the members are fully articulated in such proceeding. We do not believe that respondent Committees have the discretion to set aside their rules anytime they wish. This is especially true here where what is involved is the contempt power. It must be stressed that the *Rules* are not promulgated for their benefit. More than anybody else, it is the witness who has the highest stake in the proper observance of the *Rules*.

Having touched the subject of the *Rules*, we now proceed to respondent Committees' fourth argument. Respondent Committees argue that the Senate does not have to publish its *Rules* because the same was published in 1995 and in 2006. Further, they claim that the Senate is a continuing body; thus, it is not required to republish the *Rules*, unless the same is repealed or amended.

On the nature of the Senate as a "continuing body," this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate **as an institution** is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it. The Rules of the Senate itself confirms this when it states:

RULE XLIV
UNFINISHED BUSINESS

SEC. 123. Unfinished business at the end of the session shall be taken up at the next session in the same status.

All pending matters and proceedings shall terminate upon the expiration of one (1) Congress, but may be taken by the succeeding Congress as if present for the first time. (emphasis supplied)

Undeniably from the foregoing, all pending matters and proceedings, *i.e.* unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered **terminated** upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, **not in the same status**, but as if presented **for the first time**. The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. If the Senate is a continuing body even with respect to the conduct of its business, then pending matters will not be deemed terminated with the expiration of one Congress but will, as a matter of course, continue into the next Congress with the same status.

This dichotomy of the continuity of the Senate as an institution and of the opposite nature of the conduct of its business is reflected in its Rules. The Rules of the Senate (*i.e.* the Senate's main rules of procedure) states:

RULE LI
AMENDMENTS TO, OR REVISIONS OF, THE RULES

SEC. 136. **At the start of each session in which the Senators elected in the preceding elections shall begin their term of office**, the President may **endorse the Rules to the appropriate committee for amendment or revision**.

The Rules may also be amended by means of a motion which should be presented at least one day before its consideration, and the vote of the majority of the Senators present in the session shall be required for its approval. (emphasis supplied)

RULE LII
DATE OF TAKING EFFECT

SEC. 137. These Rules **shall take effect on the date of their adoption and shall remain in force until they are amended or repealed**. (emphasis supplied)

Section 136 of the Senate Rules quoted above takes into account the new composition of the Senate after an election and the possibility of the amendment or revision of the Rules at the start of each session in which the newly elected Senators shall begin their term.

However, it is evident that the Senate has determined that its main rules are intended to be valid from the date of their adoption until they are amended or repealed. Such language is conspicuously absent from the *Rules*. The *Rules* simply state "(t)hese Rules shall take effect seven (7) days after publication in two (2) newspapers of general circulation."[59] The latter does not explicitly provide for the continued effectivity of such rules until they are amended or repealed. In view of the difference in the language of the two sets of Senate rules, it cannot be presumed that the *Rules* (on legislative inquiries) would continue into the next Congress. The Senate of the next Congress may easily adopt different rules for its legislative inquiries which come within the rule on unfinished business.

The language of Section 21, Article VI of the Constitution requiring that the inquiry be conducted in accordance with the **duly published rules of procedure** is categorical. It is incumbent upon the Senate to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed to sufficiently put public on notice.

If it was the intention of the Senate for its present rules on legislative inquiries to be effective even in the next Congress,

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[59] Section 24, Rules of Procedure Governing Inquiries in Aid of Legislation.

it could have easily adopted the same language it had used in its main rules regarding effectivity.

Lest the Court be misconstrued, it should likewise be stressed that not all orders issued or proceedings conducted pursuant to the subject *Rule*s are null and void. Only those that result in violation of the rights of witnesses should be considered null and void, considering that the rationale for the publication is to protect the rights of witnesses as expressed in Section 21, Article VI of the Constitution. *Sans* such violation, orders and proceedings are considered valid and effective.

Respondent Committees' last argument is that their issuance of the contempt order is not precipitate or arbitrary. Taking into account the totality of circumstances, we find no merit in their argument.

As we have stressed before, petitioner is not an unwilling witness, and contrary to the assertion of respondent Committees, petitioner did not assume that they no longer had any other questions for him. He repeatedly manifested his willingness to attend subsequent hearings and respond to new matters. His only request was that he be furnished a copy of the new questions in advance to enable him to adequately prepare as a resource person. He did not attend the November 20, 2007 hearing because Executive Secretary Ermita requested respondent Committees to dispense with his testimony on the ground of executive privilege. Note that petitioner is an executive official under the direct control and supervision of the Chief Executive. *Why punish petitioner for contempt when he was merely directed by his superior?* Besides, save for the three (3) questions, he was very cooperative during the September 26, 2007 hearing.

On the part of respondent Committees, this Court observes their haste and impatience. Instead of ruling on Executive Secretary Ermita's claim of executive privilege, they curtly dismissed it as unsatisfactory and ordered the arrest of petitioner. They could have informed petitioner of their ruling and given him time to decide whether to accede or file a motion for reconsideration. After all, he is not just an ordinary witness;

he is a high- ranking official in a co-equal branch of government. He is an alter ego of the President. The same haste and impatience marked the issuance of the contempt order, despite the absence of the majority of the members of the respondent Committees, and their subsequent disregard of petitioner's motion for reconsideration alleging the pendency of his petition for *certiorari* before this Court.

On a concluding note, we are not unmindful of the fact that the Executive and the Legislature are political branches of government. In a free and democratic society, the interests of these branches inevitably clash, but each must treat the other with official courtesy and respect. This Court wholeheartedly concurs with the proposition that it is imperative for the continued health of our democratic institutions that we preserve the constitutionally mandated checks and balances among the different branches of government.

In the present case, it is respondent Committees' contention that their determination on the validity of executive privilege should be binding on the Executive and the Courts. It is their assertion that *their* internal procedures and deliberations cannot be inquired into by this Court supposedly in accordance with the principle of respect between co-equal branches of government. Interestingly, it is a courtesy that they appear to be unwilling to extend to the Executive (on the matter of executive privilege) or this Court (on the matter of judicial review). It moves this Court to wonder: In respondent Committees' paradigm of checks and balances, what are the checks to the Legislature's all-encompassing, awesome power of investigation? It is a power, like any other, that is susceptible to grave abuse.

While this Court finds laudable the respondent Committees' well-intentioned efforts to ferret out corruption, even in the highest echelons of government, such lofty intentions do not validate or accord to Congress powers denied to it by the Constitution and granted instead to the other branches of government.

There is no question that any story of government malfeasance deserves an inquiry into its veracity. As respondent Committees

contend, this is founded on the constitutional command of transparency and public accountability. The recent clamor for a "search for truth" by the general public, the religious community and the academe is an indication of a concerned citizenry, a nation that demands an accounting of an entrusted power. However, the best venue for this noble undertaking is not in the political branches of government. The customary partisanship and the absence of generally accepted rules on evidence are too great an obstacle in arriving at the truth or achieving justice that meets the test of the constitutional guarantee of due process of law. We believe the people deserve a more exacting "search for truth" than the process here in question, if that is its objective.

WHEREFORE, respondent Committees' Motion for Reconsideration dated April 8, 2008 is hereby *DENIED*.

SO ORDERED.

Corona, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Brion, JJ.,* concur.

Quisumbing and *Reyes, JJ.,* see separate opinion.

Puno, C.J., see dissenting opinion.

Ynares-Santiago and *Austria-Martinez, JJ.,* the C.J. certifies that Justices Santiago and Austria-Martinez, join his dissent.

Carpio, J., the C.J. certifies that J. Carpio maintains his dissent.

Carpio-Morales, J., the dissent of J. Carpio-Morales to the main ponencia remains.

Azcuna, J., the C.J. certifies that J. Azcuna maintains his dissent and joins the C.J.

SEPARATE OPINION ON THE MOTION FOR RECONSIDERATION

QUISUMBING, *J.*:

The instant motion filed by the respondents Senate Committees on Accountability of Public Officers and Investigations, Trade and Commerce, and National Defense and Security, seeks a reconsideration of the Court's March 25, 2008 Decision, which granted petitioner Romulo Neri's petition for *certiorari*. The Court nullified the Order dated January 30, 2008, of the Senate Committees citing petitioner in contempt and directing his arrest and detention. In said Decision, I concurred in the result.

For as long as the requirement of due process is paramount in proceedings involving life and liberty, the instant motion for reconsideration, which merely reiterates arguments that have been adequately threshed out in the Decision,[1] must emphatically be denied. With due respect, we find that in Neri's case, respondents had neglected to observe elements of due process on more than one occasion in their proceedings, and thereby committed grave abuse of discretion which is proscribed by the present fundamental law.[2]

Worth stressing at the outset, the Senate is constitutionally required to publish its rules of procedure on the conduct of legislative inquiries in aid of legislation. Section 21 of Article VI of the 1987 Constitution states:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance

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[1] *Neri v. Senate*, G.R. No. 180643, March 25, 2008.

[2] 1987 Constitution, Article VIII, Sec. 1.

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Dwelling on this provision, *Senate of the Philippines v. Ermita*[3] declared:

> Section 21, Article VI likewise establishes crucial safeguards that proscribe the legislative power of inquiry. The provision requires that the inquiry be done in accordance with the Senate or House's duly published rules of procedure, necessarily implying the constitutional infirmity of an inquiry conducted without duly published rules of procedure.[4]

Also on this matter, the eminent constitutionalist Fr. Joaquin G. Bernas, amply commented:

> The significance of the second limitation on the investigatory power – that the inquiry be "in accordance with its duly published rules of procedure" – can, perhaps, be appreciated by considering it side by side with the control Congress has over its rules when they affect merely matters internal to it. As already seen in *Osmeña, Jr. v. Pendatun*, where Congress suspended the operation of a House rule which could have protected Congressman Osmeña, the Supreme Court accepted the view that parliamentary rules "may be waived or disregarded by the legislative body." This view can be accepted as applicable when private rights are not affected. When, however, the private rights of witnesses in an investigation are involved, Section 21 now prescribes that Congress and its committees must follow the "duly published rules of procedure." Moreover, Section 21 may also be read as requiring that Congress must have "duly published rules of procedure" for legislative investigations. Violation of these rules would be an offense against due process.
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> The third limitation on legislative investigatory power is that "the rights of persons appearing in or affected by such inquiries shall be respected." This is just another way of saying that legislative investigations must be "subject to the limitations placed by the Constitution on governmental action." And since all governmental action must be exercised subject to constitutional limitations,

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[3] G.R. Nos. 169777, 169659, 169660, 169667, 169834 & 171246, April 20, 2006, 488 SCRA 1.

[4] *Id.* at 44.

principally found in the Bill of Rights, this third limitation really creates no new constitutional right. But it emphasizes such fundamentals as the right against self-incrimination and unreasonable searches and seizures and the right to demand, under due process, that Congress observe its own rules.[5]

Justice Isagani A. Cruz, in his book *Philippine Political Law*, offers a verifiable observation:

> The reason is that in the past this power was much abused by some legislators who used it for illegitimate ends or to browbeat or intimidate witnesses, usually for grandstanding purposes only. There were also times when the subject of the inquiry was purely private in nature and therefore outside the scope of the powers of the Congress.
>
> To correct these excesses, it is now provided that the legislative inquiry must be in aid of legislation, whether it be under consideration already or still to be drafted. Furthermore, the conduct of the investigation must be strictly in conformity with the rules of procedure that must have been published in advance for the information and protection of the witnesses.[6]

Hence, it is indispensable that the Senate Rules of Procedure during the current 14th Congress must be duly published. The problem is, the rules have not been published in the Official Gazette or newspaper of general circulation as required by *Tañada v. Tuvera*.[7] Publication in either of these forms is mandatory to comply with the due process requirement. Due process requires that fair notice be given to those concerned before the rules that put their liberty at risk take effect.[8] The rationale of this requirement was enunciated in *Tañada* as follows:

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[5] J. BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 740-741 (2003 ed.).

[6] I. CRUZ, *PHILIPPINE POLITICAL LAW*, 163-164 (2002 ed.).

[7] G.R. No. 63915, December 29, 1986, 146 SCRA 446.

[8] See *Globe Telecom, Inc. v. National Telecommunications Commission*, G.R. No. 143964, July 26, 2004, 435 SCRA 110, 148, which held that Section 21 of the Public Service Act requires notice and hearing because a

Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn.[9]

Fr. Bernas also said that there can be no such thing as a law that is effective immediately, even if the law is not penal in nature. The underlying reason for this rule is that due process, which is a rule of fairness, requires that those who must obey a command must first know the command.[10]

Hence, the current Senate cannot in good conscience neglect to publish its Rules of Procedure. Nor could its Committee ignore the Rules, specially those on quorum. In the absence of a published rule of procedure on a matter which is the subject of legislative inquiry, any action which affects substantial rights of persons would be anathema, and risks unconstitutionality. Even if there is such a rule or statute duly published, if it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application, the rule or statute would be repugnant to the Constitution in two respects: it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves the law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[11] How much more in this case where there is a patent lack of publication and proper notice of the

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fine is a sanction, regulatory and even punitive in character. It also said that the requirement is the essence of due process and its non-observance will, as a rule, invalidate the administrative proceedings.

[9] *Tañada v. Tuvera*, *supra* note 7 at 456.

[10] *Supra* note 5 at 130.

[11] Cf *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 439-440.

applicable rules. Or where the rules are misread and misapplied resulting in lack of quorum.[12]

Beyond debate, the fundamental law prohibits deprivation of liberty without due process of law. Comparatively speaking, the Court has on many occasions required judges to comply strictly with the due process requirements on issuing warrants of arrest, failure of which has resulted in the voiding of the warrants. The denial of a person's fundamental right to due process amounts to the illegality of the proceedings against him. The doctrine consistently adhered to by the Supreme Court is that a denial of due process suffices to cast on the official act taken by whichever branch of the government the impress of nullity, the fundamental right to due process being a cornerstone of our legal system.[13] The right to due process is a cardinal and primary right which must be respected in all proceedings.[14]

Even granting *arguendo* that the rules had been published, the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee do not state that respondent Committees have the power to issue an order of arrest. The rules only authorize the Committees to detain a witness found guilty of contempt. The Committees cannot go outside the clear ambit of its rules of procedure, as due process demands proper obedience to them.[15]

Moreover, it is also glaring that respondents did not consider petitioner's request for an advance copy of the questions that would be asked of him, as it was not unreasonable and difficult to comply with. In a letter dated November 29, 2007 to the Blue Ribbon Committee, petitioner requested that if there were

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[12] See cf "Tatad points out Senate's 'misreading' of its rules." Manila Bulletin, July 29, 2008, p. 18.

[13] *Macias v. Macias*, G.R. No. 149617, September 3, 2003, 410 SCRA 365, 371.

[14] *Saya-ang, Sr. v. Commission on Elections*, G.R. No. 155087, November 28, 2003, 416 SCRA 650, 656.

[15] *Ong v. Court of Appeals*, G.R. No. 132839, November 21, 2001, 370 SCRA 48, 54.

new matters not yet taken up during the September 26, 2007 hearing, he be furnished questions in advance as to those matters he needed to clarify so that he may adequately prepare himself as a resource person. This request was further reiterated in another letter sent by his counsel, Atty. Antonio R. Bautista. Unfortunately, respondents did not grant this valid request, and instead precipitately issued the contempt and arrest order against petitioner.

Further, in our considered view, Neri was entitled to a ruling on his claim of executive privilege. For initially, both sides had agreed in open court to allow more exhaustive inquiry in the Senate on this matter. But as respondents themselves admitted, they did not rule on the claim of executive privilege, but instead sanctioned Neri for contempt.

The very recent case of *Aquino v. Ng*[16] is instructive on the subject of contempt, as far as court procedures are concerned. It held:

> Moreover, the RTC failed to observe the standards of due process when it first cited petitioner for contempt of court. It must be stressed that indirect contempt proceedings partake of the nature of a criminal prosecution; hence, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed.
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> The records do not bear any indication that petitioner was afforded an opportunity to rebut the charges against him when he was first charged by respondent with contempt. While petitioner was able to oppose respondent's motion, inasmuch as an indirect contempt charge partakes of the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. There is no question that petitioner's disobedience to the RTC's lawful order constitutes indirect contempt of court. This, however, was not a license for the RTC to disregard petitioner's rights. It should have held a hearing in order to provide petitioner with the opportunity to state his defense and explain his side. A hearing affords the contemner the opportunity

[16] G.R. No. 155631, July 27, 2007, 528 SCRA 277.

to adduce before the court documentary or testimonial evidence in his behalf. The hearing will also allow the court more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself.[17]

Also, *Commissioner Rodriguez v. Judge Bonifacio*[18] held:

> Contempt of court has been distinctly described as an offense against the State and not against the judge personally. To reiterate, a judge must always remember that the power of the court to punish for contempt should be exercised for purposes that are not personal, because that power is intended as a safeguard, not for judges as persons, but for the functions they exercise.
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> Viewed *vis-à-vis* the foregoing circumscription of a court's power to punish for contempt, it bears stressing that the court must exercise the power of contempt judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.[19]

Comparatively, the subjective nature of respondents' action in the present case is patent if not glaring. This is in contrast with the legitimate purpose of the inquiry in the case of *Sabio v. Gordon*,[20] where the petitioners therein were invited to the Senate's public hearing on Senate Resolution No. 455, particularly "on the anomalous losses incurred by the Philippine Overseas Telecommunications Corporation, Philippine Communications Satellite Corporation, and Philcomsat Holdings Corporations due to the alleged improprieties in the operations by their respective board of directors." The inquiry focused on therein petitioners' acts committed in the discharge of their duties as officers and directors of said corporations where the government has interest.[21]

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[17] *Id.* at 284-285.

[18] 398 Phil. 441 (2000).

[19] *Id.* at 468.

[20] G.R. Nos. 174340, 174318 & 174177, October 17, 2006, 504 SCRA 704.

[21] *Id.* at 737.

Here, in the instant controversy, the least respondents could have done, after browbeating the petitioner Neri (who was sick at that time) with a barrage of questions was to have granted his request for a copy of the questions for the next hearing. It is a well-settled principle in law that what due process contemplates is freedom from arbitrariness; what it requires is fairness and justice; substance, rather than form, being paramount.[22] It is essential that the contemner be granted an opportunity to meet the charges against him and to be heard in his defense, as contempt of court proceedings are commonly treated as criminal in nature.[23] A finding of guilt for an offense, no matter how light, for which one is not properly charged and tried cannot be countenanced without violating the rudimentary principle of due process.[24]

The case of *Cañas v. Castigador*[25] held:

> [T]he salutary rule is that the power to punish for contempt must be exercised on the preservative not vindictive principle, and on the corrective not retaliatory idea of punishment. The courts and other tribunals vested with the power of contempt must exercise the power for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercised.
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> Viewed in the light of the foregoing circumscription of a court's power to punish for contempt, it bears stressing that the court must exercise the power of contempt judiciously and sparingly with utmost self-restraint, with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.[26]

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[22] *Long v. Basa*, G.R. Nos. 134963-64, 135152-53 & 137135, September 27, 2001, 366 SCRA 113, 129.

[23] *Rodriguez v. Bonifacio*, A.M. No. RTJ-99-1510, November 6, 2000, 344 SCRA 519, 545-546.

[24] *Summary Dismissal Board and the Regional Appellate Board, PNP, Region VI, Iloilo City v. Torcita*, 330 SCRA 153, 164.

[25] G.R. No. 139844, December 15, 2000, 348 SCRA 425.

[26] *Id.* at 433 & 439.

All told, in our humble view, the respondents did not observe basic tenets of due process, which we believe is more than enough reason to grant petitioner Neri's petition. Worth stressing again, whenever there is an imminent threat to the life and liberty of the person in any proceeding conducted by or under the auspices of the State, his right to due process of law, when demanded, must not be ignored.[27]

In sum, we agree that respondents' Motion for Reconsideration must be denied. This Court did not err in upholding petitioner Neri's constitutional rights, particularly to due process, by granting his petition in the assailed Decision dated March 25, 2008.

SEPARATE OPINION

REYES, R.T., *J.*:

I AM one of two Justices who only concurred in the result of the majority decision penned by esteemed colleague, Justice Teresita Leonardo-De Castro. I again effectively do so now in the resolution of the motion for reconsideration through this separate opinion. It has become necessary for me to clarify for the record my position on the issues of executive privilege and the contempt and arrest powers of the Senate.

As expected, given the highly-politicized complexion of the case, the Court ruling received a mixed reaction of praise and flak. My kind of concurrence and that of Justice Leonardo A. Quisumbing did not escape criticism. An article[1] erroneously described Our vote as "unclear," casting doubt on the final verdict of the *Neri* petition. Another item[2] wrongly branded

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[27] Cf *Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000, 322 SCRA 160, 204.

[1] "More critics slam SC on Neri Decision," http://www.abs-cbnglobal.com/ItoangPinoy/News/ PhilippineNews/tabid/140/ArticleID/1296/ TargetModuleID/516/Default.aspx; accessed May 15, 2008.

[2] "Inside story: SC justices had pre-determined votes on Neri case," NewsBreak written by Marites Datunguilan Vitug, April 2, 2008, http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4329&Itemid=88889384 accessed April 22, 2008.

us as mere "straddlers," sitting on both sides of the fence and coming up with a decision only at the last minute.

A sad commentary of the times is when a Justice takes a stand which flatters the political opposition, it is hailed as courageous; when the stand benefits the administration, it is hounded as cowardly. But judicial independence is neither here nor there. For me, it is judicial action that is right and reasonable, taken without fear or favor, unmindful of incidental consequences.

I thus take exceptions to the unfounded criticisms.

For one, a concurrence in the result is not unprecedented. Several justices in this Court's long history had voted in a similar fashion. Then Chief Justice Ramon Aquino voted in the same manner in the 1985 case of *Reformina v. Tomol, Jr.*,[3] a case tackling the proper interest rate in an action for damages for injury to persons and loss of property.

In the 2001 landmark case of *Estrada v. Desierto*,[4] involving the twin issues of the resignation of deposed President Joseph Estrada and the legitimacy of the assumption of President Gloria Macapagal-Arroyo as his successor, Justices Kapunan, Pardo, Buena, Ynares-Santiago and Sandoval-Gutierrez concurred in the result of the decision penned by Chief Justice Reynato S. Puno.[5] In 2006, Chief Justice Panganiban voted similarly in *Republic v. Hong*,[6] a case revisiting the mandatory requirement of a "credible witness" in a naturalization proceeding under Commonwealth Act 473.

For another, there should be no point of confusion. A concurrence in the result is a favorable vote for the decision crafted by the *ponente*. It simply means that I agreed in the

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[3] G.R. No. 59096, October 11, 1985, 139 SCRA 260, 267.

[4] G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452, 531.

[5] *J.* Kapunan, *J.* Ynares-Santiago, and *J.* Sandoval-Gutierrez reserved the right to file separate opinions.

[6] G.R. No. 168877, March 24, 2006, 485 SCRA 405, 423.

outcome or disposition of the case, but not necessarily on all the grounds given in the *ponencia*. I concurred with the weightier reasons stated in the majority decision to grant the petition for *certiorari* and to quash the Senate arrest and contempt order against petitioner, Secretary Neri. However, I did not share some of the reasoning of the *ponente*.

If an unqualified vote of concurrence is allowed on a majority decision or dissenting opinion, there is no reason why a vote in the result should be treated differently, much less proscribed.

Now, on the merits of respondents' motion for reconsideration which merely restates their arguments against the petition focusing on executive privilege invoked on three (3) questions.[7] For the guidance of the Bench, the Bar and the Academe, I opt to correlate my position with those of the other Justices, with due respect to them. To be sure, Our decision and resolution in this case will continue to be the subject of legal scrutiny, public debate and academic discussion.

I

The proper basis of executive privilege in the Neri petition is only presidential communication privilege; executive privilege based on diplomacy and foreign relations is not valid for lack of specificity.

Ang tamang batayan ng pribilehiyo ng Pangulo sa petisyon ni Neri ay ang pampangulong pribilehiyo sa komunikasyon; ang pampangulong pribilehiyo sa diplomasya at ugnayang panlabas ay di angkop dahil sa kawalan ng pagtitiyak.

The majority decision sustained executive privilege on two grounds: (a) under the presidential communication privilege;

[7] The three questions are:

a) Whether the President followed up the (NBN) project?
b) Were you dictated to prioritize the ZTE?
c) Whether the President told you to go ahead and approve the project after being told about the alleged bribe?

and (2) executive privilege on matters relating to diplomacy or foreign relations.[8]

I agree with the *ponente* that the three questions are covered by the presidential communication privilege. But I disagree that they are covered by executive privilege on matters affecting diplomacy or foreign relations.

Ako'y sumasang-ayon sa ponente na ang tatlong katanungan ay saklaw ng pampangulong pribilehiyo sa komunikasyon. Subalit hindi ako sang-ayon na ang mga ito ay sakop ng pampangulong pribilehiyo sa diplomasya o ugnayang panlabas.

The distinction between presidential **communication** privilege and executive privilege based on **diplomacy and foreign relations** is important because they are two different categories of executive privilege recognized by jurisprudence.[9] The first pertains to those communications between the President and her close advisors relating to official or state matters; the second are those matters that have a direct bearing on the conduct of our external affairs with other nations, in this case the Republic of China.

The two categories of executive privilege have different rationale. Presidential communication privilege is grounded on the paramount need for candor between the President and her close advisors. It gives the President and those assisting her sufficient freedom to interact without fear of undue public scrutiny. On the other hand, executive privilege on matters concerning our diplomatic or foreign relations is akin to state secret privilege which, when divulged, will unduly impair our external relations with other countries.[10]

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[8] Majority decision penned by *J.* Leonardo-De Castro, pp. 19, 21.

[9] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1; *Chavez v. Philippine Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744; *Almonte v. Vasquez*, G.R. No. 95367, May 23, 1995, 244 SCRA 286.

[10] Concurring opinion of *J.* Tinga, p. 10.

The distinction is vital because of the need for **specificity** in claiming the privilege. *Senate of the Philippines v. Ermita*[11] mandates that a claim of privilege must specify the grounds relied upon by the claimant.[12] The degree of specificity required obviously depends on the nature of the information to be disclosed.[13]

As to presidential **communication** privilege, the requirement of specificity is not difficult to meet. This kind of privilege easily passes the test. As long as the subject matter pertains to a communication between the President and her close advisor concerning official or state matters, the requirement is complied with.

There is no dispute that petitioner Neri is a close advisor of the President, being then the Chairman of the National Economic and Development Authority. The transaction involved the NBN-ZTE broadband deal, a government contract which is an official or state matter. Hence, the conversation between the President

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[11] *Supra*.

[12] In *Senate of the Philippines v. Ermita,* this Court stated:

Absent then a statement of the specific basis of a claim of executive privilege, there is no way of determining whether it falls under one of the traditional privileges, or whether, given the circumstances in which it is made, it should be respected. These, in substance, were the same criteria in assessing the claim of privilege asserted against the Ombudsman in *Almonte v. Vasquez* and, more in point, against a committee of the Senate in *Senate Select Committee on Presidential Campaign Activities v. Nixon*.

[13] In her separate concurring opinion, *J*. Carpio Morales notes that the two claims of privilege must be assessed separately because they are grounded on different public interest consideration, thus:

The two claims must be *assessed separately*, they being grounded on different public interest considerations. Underlying the presidential communications privilege is the public interest in enhancing the quality of presidential decision-making. As the Court held in the same case of *Senate v. Ermita*, "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately." The diplomatic secrets privilege, on the other hand, has a different objective – to preserve our diplomatic relations with other countries. (pp. 8-9)

and petitioner Neri is covered by the presidential communication privilege.

Of course, there is a presumption that every communication between the President and her close advisor pertains to an official or state matter. The burden is on the party seeking disclosure to prove that the communication is not in an official capacity.

The fact of conversation is the trigger of the presidential communication privilege. There is no need to give specifics or particulars of the contents of the conversation because that will obviously divulge the very matter which the privilege is meant to protect. It will be an illusory privilege if a more stringent standard is required.[14]

In contrast, a relatively higher standard of specificity is required for a claim of executive privilege based on **diplomacy or foreign relations**. As in state secrets, this type of executive privilege is content based.[15] This means that the claim is dependent on the very content of the information sought to be disclosed. To adequately assess the validity of the claim, there is a need for the court, usually in closed session, to become privy to the information. This will enable the court to sufficiently assess whether or not the information claimed to be privileged will actually impair our diplomatic or foreign relations with other countries. It is the content of the information and its effect that trigger the privilege. To be sure, a generalized claim of privilege will not pass the more stringent test of specificity.

In the case at bar, the letter[16] of Secretary Eduardo Ermita to the Senate dated November 15, 2007 asserting executive

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[14] In *Senate of the Philippines v. Ermita*, the Supreme Court stated:

> Congress must not require the executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect.

[15] Separate concurring opinion of *J.* Tinga, p. 9; dissenting opinion of *C.J.* Puno, pp. 41-42, 63.

[16] The pertinent portion of the Letter of Executive Secretary Ermita to Senator Cayetano reads:

privilege contained a mere general allegation that the conversation between the President and petitioner Neri "might" impair our diplomatic relations with the Republic of China. There is no explanation how the contents of the conversation will actually impair our diplomatic relations. Absent sufficient explanation or specifics, We cannot assess the validity of the claim of executive privilege. Obviously, bare assertion without more will not pass the more stringent test of specificity. It is in this context that I agree with the dissenting justices[17] that the claim of privilege based on diplomacy or foreign relations must be struck down as devoid of basis.

It may be noted that Justice Tinga is not also persuaded by the claim of executive privilege based on diplomacy or foreign relations. He said:

> Petitioner Neri also cites diplomatic and state secrets as basis for the claim of executive privilege, alluding for example to the alleged adverse impact of disclosure on national security and on our diplomatic relations with China. The argument hews closely to the state secrets privilege. *The problem for petitioner Neri though is that unless he informs this Court the contents of his questioned conversations with the President, the Court would have no basis to accept his claim that diplomatic and state secrets would indeed be compromised by divulging the same in a public Senate hearing.*
>
> Indeed, if the claim of executive privilege is predicated on the particular content of the information, such as the state secrets privilege, which the claimant refuses to divulge, there is no way to assess the validity of the claim unless the court judging the case becomes privy to such information. If the claimant fails or refuses to divulge such information, *I submit that the courts may not pronounce such information as privileged on content-based grounds,*

The context in which executive privilege is being invoked is that the information sought to be disclosed *might impair* our diplomatic as well as economic relations with the People's Republic of China. Given the confidential nature in which these information were conveyed to the x x x, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect.

[17] Dissenting opinions of *C.J.* Puno, pp. 69-70, *J.* Carpio, p. 24, *J.* Carpio Morales, p. 21.

such as the state secrets privilege. Otherwise, there simply would be no way to dispute such claim of executive privilege. All the claimant would need to do is to invoke the state secrets privilege even if no state secret is at all involved, and the court would then have no way of ascertaining whether the claim has been validly raised, absent judicial disclosure of such information.[18]

There is qualified presumption of presidential communication privilege.

Mayroong kwalipikadong pagpapalagay sa pampangulong pribilehiyo sa komunikasyon.

American jurisprudence[19] bestows a **qualified** presumption in favor of presidential communication privilege. This means that the initial point is against disclosure of the contents of the communication between the President and her close advisors. The burden of proof is on the agency or body seeking disclosure to show compelling reasons to overcome the presumption.

Respondent Senate Committees, however, insist that there should be no presumption in favor of presidential communication privilege. It banks on this Court's statement in *Senate of the Philippines v. Ermita*[20] that "*the extraordinary character of the exemption (executive privilege) indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure.*"[21] It is argued that the dicta in *Ermita* is contrary and even antithetical[22] to the qualified presumption under American jurisprudence. Respondents likewise cite several provisions of the 1987 Philippine Constitution favoring public disclosure over secrecy[23] in its attempt to reverse the presumption.

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[18] Separate Concurring Opinion of Justice Tinga, pp. 9-10.

[19] *US v. Nixon*, 418 US 613 (1974); *Nixon v. Sirica*, 487 F. 2d 700.

[20] *Supra* note 9.

[21] *Senate of the Philippines v. Ermita, id.* at 52.

[22] Motion for reconsideration, p. 15.

[23] *Id.* at 14-20.

I cannot agree with respondents. The Court's statement in *Ermita* must be read in its proper context. It is merely a general statement in favor of public disclosure and against government secrecy. To be sure, transparency of government actions is a laudable virtue of a republican system of government such as ours. After all, a public office is a public trust. A well informed citizenry is essential in a democratic and republican government.

But not all privileges or those that prevent disclosure of government actions are objectionable. Executive privilege is not an evil that should be thwarted and waylaid at every turn. Common sense and public policy require a certain degree of secrecy of some essential government actions. Presidential communication privilege is one of them. The President and her close advisor should be given enough leeway to candidly discuss official and state matters without fear of undue public scrutiny. The President cannot effectively govern in a fishbowl where her every action is dissected and scrutinized. Even the Senate itself enjoys the same privilege in the discharge of its constitutional functions. Internal workings of the Senate Committees, which include deliberations between the Senators and their staffs in crafting a bill, are generally beyond judicial scrutiny.

The Court's dicta in *Senate of the Philippines v. Ermita* should not be unduly emasculated as basis for a general argument in favor of full disclosure of all governmental actions, much less as foundation for a presumption against presidential communication privilege. To my mind, it was not the intention of this Court to reverse the qualified presumption of presidential communication under American jurisprudence. Quite the contrary, the Court in *Ermita*, by citing the case of *Almonte v. Vasquez*, adopted the qualified presumption of presidential communication privilege. *Almonte* quoted several American cases which favored the qualified presumption of presidential communication privilege.[24] As discussed by Chief Justice Reynato Puno in his dissenting opinion:

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[24] In her dissenting opinion, *J.* Ynares-Santiago stated:

Indeed, presidential conversations and correspondences have been recognized as presumptively privileged under case law. (*Almonte v. Vasquez*, 314 Phil. 150 [1995]). (pp. 2-3)

A hard look at *Senate v. Ermita* ought to yield the conclusion that it bestowed a qualified presumption in favor of the presidential communications privilege. As shown in the previous discussion, *U.S. v. Nixon*, as well as the other related Nixon cases *Sirica* and *Senate Select Committee on Presidential Campaign Activities, et al. v. Nixon* in the D.C. Court of Appeals, as well as subsequent cases, all recognize that there is a presumptive privilege in favor of presidential communications. The *Almonte* case quoted *U.S. v. Nixon* and recognized a presumption in favor of confidentiality of presidential communications.

The statement in *Senate v. Ermita* that the "extraordinary character of the exemptions indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure" must therefore be read to mean that there is a general disfavor of government privileges as held in *In Re Subpoena for Nixon*, especially considering the bias of the 1987 Philippine Constitution towards full public disclosure and transparency in government. In fine, *Senate v. Ermita* recognized the presidential communications privilege in *U.S. v. Nixon* and the qualified presumptive status that the U.S. High Court gave that privilege. Thus, respondent Senate Committees' argument that the burden is on petitioner to overcome a presumption against executive privilege cannot be sustained.[25]

At any rate, it is now settled that there is a qualified presumption in favor of presidential communication privilege. The majority decision[26] expressly recognized the presumption. Even Justices Ynares-Santiago[27] and Carpio,[28] in their separate dissenting opinions, agree that the presumption exists. Justice Carpio Morales[29] presented a different formulation of the

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[25] Dissenting opinion of *C.J.* Puno, pp. 75-77.

[26] Majority decision, pp. 15, 18 & 19.

[27] Dissenting opinion, pp. 2-3.

[28] Dissenting and concurring opinion, p. 15.

[29] *J.* Carpio Morales stated in her dissenting opinion:

Parenthetically, the presumption in favor of confidentiality only takes effect after the Executive has first established that the information being sought is covered by a recognized privilege. The burden is initially with the Executive to provide precise and certain reasons for upholding his claim of privilege, in keeping with the more general presumption in favor of

privilege, but she nevertheless acknowledges the presumption. In other words, the three questions directed to petitioner are presumptively privileged because they pertain to the contents of his conversation with the President. ***Sa madaling salita, ang tatlong tanong sa petisyoner ay ipinapalagay na may angking pribilehiyo dahil ito'y tungkol sa usapan nila ng Pangulo***.

Presidential communication privilege is not absolute; it is rebuttable.

Ang pampangulong pribilehiyo sa komunikasyon ay hindi ganap; ito'y maaaring salungatin.

The fact that presidential communication is privileged is not the end of the matter. It is merely the starting point of the inquiry. In *Senate of the Philippines v. Ermita*, this Court stated:

> *That a type of information is recognized as privileged does not, however, necessarily mean that it would be considered privileged in all instances.* For in determining the validity of a claim of privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also whether that privilege should be honored in a given procedural setting.[30]

All Justices[31] agree that the presumption in favor of presidential communication privilege is *rebuttable*. The agency or body seeking disclosure must present **compelling** reasons to overcome the presumption. Justice Nachura stated the delicate balancing test in this manner:

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transparency. Once it is able to show that the information being sought is covered by a recognized privilege, the burden shifts to the party seeking information, who may still overcome the privilege by a strong showing of need. (p. 25)

[30] *Senate of the Philippines v. Ermita, id.* at 47.

[31] Majority decision, p. 20; concurring opinions of *J.* Nachura, p. 11, *J.* Tinga, p. 11, *J.* Brion, p. 8; dissenting opinions of *C.J.* Puno, p. 58, *J.* Carpio Morales, p. 9, *J.* Carpio, p. 12, *J.* Ynares-Santiago, p. 1.

Because the foundation of the privilege is the protection of the public interest, any demand for disclosure of information or materials over which the privilege has been invoked must, likewise, be anchored on the public interest. Accordingly, judicial recognition of the validity of the claimed privilege depends upon "a weighing of the public interest protected by the privilege against the public interest that would be served by disclosure in a particular case." While a "demonstrated specific need" for material may prevail over a generalized assertion of privilege, whoever seeks the disclosure must make "a showing of necessity sufficient to outweigh the adverse effects the production would engender.[32]

The Senate power of investigation in aid of legislation is different from its oversight function.

Ang kapangyarihan ng Senado na magsiyasat kaakibat ng tungkulin sa paggawa ng batas ay kaiba sa gawain nito ng pagsubaybay.

The context or procedural setting in which executive privilege is claimed is vital in the courts' assessment of the privilege. Since executive privilege has constitutional underpinnings, the degree of proof required to overcome the presumption must likewise have constitutional support. Here, the context or setting of the executive privilege is a joint Senate Committee[33] ***investigation in aid of legislation***.

There is a statement in the majority decision that respondent Senate Committees were exercising their oversight function,[34]

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[32] Concurring opinion of *J.* Nachura, pp. 2-3.

[33] The NBN-ZTE investigation is a joint committee investigation by the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), Committee on Trade and Commerce and Committee on National Defense and Security.

[34] CONSTITUTION (1987), Art. VI, Sec. 22 provides:

The heads of department may upon their own initiative, with the consent of the President, or upon the request of either House, or as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of

instead of their legislative powers[35] in asking the three questions to Secretary Neri.[36] The characterization of the Senate power as one in the exercise of its oversight, instead of legislative, function has severe repercussions because of this Court's dicta in *Ermita* that the Senate's oversight function "*may be facilitated by compulsory process only to the extent that it is performed in pursuit of legislation*." In exercising its oversight function, the Senate may only **request** the appearance of a public official. In contrast, it may **compel** appearance when it is exercising its power of investigation in aid of legislation.

On this score, I part way with the majority decision. To be sure, it is difficult to draw a line between the oversight function and the legislative function of the Senate. Nonetheless, there is sufficient evidence on record that the Senate Committees were actually exercising their legislative power rather than their

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Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the state or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

[35] *Id.*, Sec. 21 provides:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries **in aid of legislation** in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

[36] The majority decision stated:

The foregoing is consistent with the earlier case of *Nixon v. Sirica*, where it was held that presidential communications are presumptively privileged and that the presumption can be overcome only by mere showing of public need by the branch seeking access to conversations. The courts are enjoined to resolve the competing interests of the political branches of the government "in the manner that preserves the essential functions of each Branch." Here, the record is bereft of any categorical explanation from respondent Committees to show a compelling or critical need for the answers to the three (3) questions in the enactment of a law. ***Instead, the questions veer more towards the exercise of the legislative oversight function under Section 22 of Article VI rather than Section 21 of the same Article. Senate v. Ermita ruled that the "the oversight function of Congress may be facilitated by compulsory process only to the extent that it is performed in pursuit of legislation."***

oversight function in conducting the NBN-ZTE investigation. Various resolutions,[37] privilege speeches[38] and bills[39] were filed

[37] The following are the resolutions passed in the Senate in connection with the NBN-ZTE investigation:

1. P.S. Res. (Philippine Senate Resolution) No. 127, introduced by Senator Aquilino Q. Pimentel, Jr., entitled:

> Resolution Directing the Blue Ribbon Committee and the Committee on Trade and Industry to Investigate, in Aid of Legislation, the Circumstances Leading to the Approval of the Broadband Contract with ZTE and the Role Played by the Officials Concerned in Getting It Consummated and to Make Recommendations to Hale to the Courts of Law the Persons Responsible for any Anomaly in Connection therewith, if any, in the BOT Law and other Pertinent Legislations.

2. P.S. Res. No. 129, introduced by Senator Panfilo M. Lacson, entitled:

> Resolution Directing the Committee on National Defense and Security to Conduct an Inquiry in Aid of Legislation into the National Security Implications of Awarding the National Broadband Network Contract to the Chinese Firm Zhong Xing Telecommunications Equipment Company Limited (ZTE Corporation) with the End in View of Providing Remedial Legislation that Will Further Protect Our National Sovereignty Security and Territorial Integrity.

3. P.S. Res. No. 136, introduced by Senator Miriam Defensor Santiago, entitled:

> Resolution Directing the Proper Senate Committee to Conduct an Inquiry, in Aid of Legislation, on the Legal and Economic Justification of the National Broadband Network (NBN) Project of the Government.

4. P.S. Res. No. 144, introduced by Senator Manuel Roxas III, entitled:

> Resolution Urging Gloria Macapagal-Arroyo to Direct the Cancellation of the ZTE Contract.

[38] The following are the Privilege Speeches delivered in connection with the NBN ZTE investigation:

1. Privilege Speech of Senator Panfilo M. Lacson, delivered on September 11, 2007, entitled "Legacy of Corruption."

2. Privilege Speech of Senator Miriam Defensor Santiago, delivered on November 24, 2007, entitled "International Agreements in Constitutional Law: The Suspended RP-China (ZTE) Loan Agreement."

[39] The following are the pending bills filed in connection with the NBN-ZTE investigation:

1. Senate Bill No. 1793, introduced by Senator Manuel Roxas III, entitled:

> An Act Subjecting Treaties, International or Executive Agreements Involving Funding in the Procurement of Infrastructure Projects,

in the Senate in connection with the NBN-ZTE contract. Petitioner's counsel, Atty. Antonio Bautista, even concedes that the investigation conducted by the Senate Committees were in aid of legislation.[40]

While there is a perception in some quarters that respondents' investigation is being carried too far or for some other motives, We cannot but accord respondents the benefit of the doubt.

The principle of separation of powers requires that We give due respect to the Senate assertion that it was exercising its legislative power in conducting the NBN-ZTE investigation. It is not for this Court to challenge, much less second guess, the purpose of the NBN-ZTE investigation or the motives of the Senators in probing the NBN-ZTE deal. We must presume a legislative purpose from the investigation because of the various pending bills filed in the Senate. At any rate, it is settled that the improper motives of some Senators, if any, will not vitiate the Senate's investigation as long as the presumed legislative purpose is being served by the work of the Senate Committees.[41]

***Rebutting the presumption:* e*xecutive privilege is honored in civil, but not in criminal proceedings*.**

Goods, and Consulting Services to be Included in the Scope and Application of Philippine Procurement Laws, Amending for the Purpose, Republic Act No. 9184, Otherwise Known as the Government Procurement Reform Act, and for Other Purposes.

2. Senate Bill No. 1794, introduced by Senator Manuel Roxas III, entitled:

An Act Imposing Safeguards in Contracting Loans Classified as Official Development Assistance, Amending for the Purpose, Republic Act No. 8182, as Amended by Republic Act No. 8555, Otherwise Known as the Official Development Assistance Act of 1996, and for Other Purposes.

3. Senate Bill No. 1317, introduced by Senator Miriam Defensor Santiago, entitled:

An Act Mandating Concurrence to International Agreements and Executive Agreements.

[40] TSN, March 4, 2008, p. 82.

[41] *Watkins v. United States*, 354 US 178, 1 L. Ed 1273 (1957).

Ang pribilehiyo ay iginagalang sa kasong sibil, ngunit hindi sa kasong kriminal.

Given that a claim of presidential communication privilege was invoked by Secretary Neri in a Senate investigation in aid of legislation, it is necessary to examine how a similar claim of executive privilege fared in other contexts, particularly in criminal and civil proceedings, in order to gain insight on the evidence needed to rebut the qualified presumption.

There is a consensus among the Justices of this Court that a claim of executive privilege cannot succeed in a criminal proceeding. The reason is simple. The right of the accused to due process of law requires nothing less than full disclosure. When vital information that may exculpate the accused from a crime is withheld from the courts, the wheels of justice will be stymied and the constitutional right of the accused to due process of law becomes illusory. It is the crucial need for the information covered by the privilege and the dire consequences of nondisclosure on the discharge of an essential judicial function which trumps executive privilege.

The leading case on executive privilege in a **criminal** proceeding is *U.S. v. Nixon*.[42] It involved a *subpoena duces tecum* to then United States President Richard Nixon and his staff to produce tape recordings and documents in connection with the Watergate scandal. Ruling that executive privilege cannot prevail in a criminal proceeding, the Supreme Court of the United States stated:

> The interest in preserving confidentiality is weighty indeed and entitled to great respect. However, we cannot conclude that advisers will be moved to temper the candor of their remarks by the infrequent occasions of disclosure because of the possibility that such conversations will be called for in the context of criminal prosecution.
>
> On the other hand, the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts. President's acknowledged need

[42] 418 US 613 (1974).

for confidentiality in the communications of his office is general in nature, whereas the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice. Without access to specific facts a criminal prosecution may be totally frustrated. The President's broad interest in confidentiality of communications will not be vitiated by disclosure of a limited number of conversations preliminarily shown to have some bearing on the pending criminal case.[43]

I hasten to point out, however, that in this case, there is yet no criminal proceeding, hence, the vital ruling on *Nixon* does not square with Neri.

Again, in contrast, executive privilege is generally honored in a civil proceeding. The need for information in a civil case is not as significant or does not have the same stakes as in a criminal trial. Unlike the accused in a criminal trial, the defendant in a civil case will not lose his life or liberty when information covered by executive privilege is left undisclosed to the courts. Moreover, there is the exacting duty of the courts to prove the guilt of the accused beyond reasonable doubt. But mere preponderance of evidence is required in a civil case to deliver a verdict for either party. That burden may be hurdled even without a full disclosure of information covered by the executive privilege.

The leading case on executive privilege in a civil proceeding is *Cheney v. US District Court of the District of Columbia*.[44] It involved discovery orders against Vice President Cheney and other federal officials and members of the National Energy Policy Development Group. Differentiating the earlier case of *Nixon*, the Supreme Court of the United States in *Cheney* held that the claim of executive privilege will be honored in a civil proceeding because it does not share the same "constitutional dimension" as in a criminal trial, thus:

The Court of Appeals dismissed these separation of powers concerns. Relying on *United States v. Nixon*, it held that even though

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[43] *U.S. v. Nixon, id.*

[44] 542 US 367, 124 S. Ct. 2576 (2004).

respondents' discovery requests are overbroad and "go well beyond FACA's requirements," the Vice- and his former colleagues on the NEPDG "shall bear the burden" of invoking privilege with narrow specificity and objecting to the discovery requests with "detailed precision." In its view, this result was required by *Nixon's* rejection of an "absolute, unqualified presidential privilege of immunity from judicial process under all circumstances." x x x

The analysis, however, overlooks fundamental differences in the two cases. *Nixon* involves the proper balance between the Executive's interest in the confidentiality of its communication and the "constitutional need for production of relevant evidence in a criminal proceeding." The Court's decision was explicit that it was "not … concerned with the balance between the President's generalized interest in confidentiality and the need for relevant evidence in civil litigation … We address only the conflict between the President's assertion of a generalized privilege of confidentiality and the constitutional need for relevant evidence in criminal trials."

The distinction Nixon drew between criminal and civil proceedings is not just a matter of formalism. x x x In light of the "fundamental" and "comprehensive" need for "every man's evidence" in the criminal justice system, not only must the Executive Branch first assert privilege to resist disclosure, but privilege claims that shield information from a grand jury proceeding or a criminal trial are not to be "expansively construed, for they are in derogation of the search for truth." *The need for information for use in civil cases, while far from negligible, does not share the urgency or significance of the criminal subpoena requests in Nixon. As Nixon recognized, the right to the production of relevant evidence in civil proceedings does not have the same "constitutional dimensions."*[45]

Nixon and *Cheney* present a stark contrast in the court's assessment of executive privilege in two different procedural settings. While the privilege was honored in a civil proceeding, it was held unavailing in a criminal trial. It is arguable that in both cases, there is a **compelling need** for the information covered by the privilege. After all, the courts may be unable to deliver a fair verdict without access to the information covered by the privilege.

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[45] *Cheney v. US District Court of the District of Columbia, id.*

I submit that **the distinction lies on the effect of non-disclosure on the efficient discharge of the court's judicial function**. The court may not adjudge the guilt of the accused beyond reasonable doubt in a criminal trial without the information covered by the privilege. The information may, in fact, exculpate the accused from the crime. In contrast, the court may render judgment in a civil case even absent the information covered by the privilege. The required burden of proof may still be hurdled even without access to the information.

In short, if the body or agency seeking disclosure may efficiently discharge its constitutional duty even without access to the information, the privilege will be honored. If, on the other hand, the privilege substantially impairs the performance of that body or agency's constitutional duty, the information covered by the privilege will be disclosed to enable that agency to comply with its constitutional duty.

There are two significant tests for rebutting the qualified presumption of presidential communication privilege.

May dalawang makahulugang panukat sa pagsalungat ng kwalipikadong pagpapalagay sa pampangulong pribilehiyo sa komunikasyon.

The majority decision ruled that the qualified presumption of presidential communication privilege may be overturned only by a showing of **public need** by the branch seeking access to conversation.[46]

Chief Justice Puno opines that the test must center on the efficient discharge of the constitutional functions of the President *vis-à-vis* the Senate. Using the "function impairment test," the Court weighs how the disclosure of the withheld information would impair the President's ability to perform her constitutional duties more than nondisclosure would impair the other branch's ability to perform its constitutional functions.[47] The test entails

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[46] Majority decision, p. 20.

[47] Dissenting opinion of *C.J.* Puno, p. 59.

an initial assessment of the strength of the qualified presumption which shall then be weighed against the adverse effects of non-disclosure on the constitutional function of the agency seeking the information.

Justice Carpio Morales agrees that the proper test must focus on the effect of non-disclosure on the discharge of the Senate's constitutional duty of enacting laws, thus:

> Thus, a government agency that seeks to overcome a claim of the presidential communications privilege must be able to demonstrate that access to records of presidential conversations, or to testimony pertaining thereto, is **vital** to the responsible performance of that agency's official functions.[48]

In his separate concurring opinion, Justice Tinga highlights that the "claim of executive privilege should be *tested against the function of the legislative inquiry*, which is to acquire insight and information for the purpose of legislation. He simplifies the issue in this manner: *would the divulgence of the sought-after information impede or prevent the Senate from enacting legislation*?[49]

Justice Nachura tersely puts it that to hurdle the presumption the Senate must show "how and why the desired information "is *demonstrably critical* to the responsible fulfillment of the Committees' functions."[50]

Justice Consuelo Ynares-Santiago, on the other hand, asserts that the proper test should not only be confined to the consequences of disclosure or non-disclosure on the constitutional functions of the President and the Senate, but must involve a holistic assessment of "public interest." She notes that "grave implications on public accountability and government transparency" are factors that must be taken into account in resolving a claim of executive privilege.[51]

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[48] Separate dissenting opinion of *J.* Carpio Morales, p. 25.

[49] Concurring opinion of *J.* Tinga, p. 11.

[50] Concurring opinion of *J.* Nachura, pp. 10-11.

[51] Separate dissenting opinion of *J.* Ynares-Santiago, p. 3.

The seemingly different tests submitted by the concurring and dissenting justices are but motions of the same type of balancing act which this Court must undertake in resolving the issue of executive privilege. The "public interest" test propounded by Justice Ynares-Santiago emphasizes the general basis in resolving the issue, which is **public interest**. The "balancing test" espoused by the majority justices and Justice Carpio Morales, and the "function impairment test" of Chief Justice Puno, on the other hand, underscore the main factor in resolving the conflict, which is to assess the **consequence of non-disclosure** on the effective discharge of the constitutional function of the branch or agency seeking the information.

The "balancing test" and the "function impairment test" approximate the test applied by the Supreme Court of the United States in *Nixon* and *Cheney*. An analysis of *Nixon* and *Cheney* reveals that the test must be anchored on two points. **One**, the compelling need for the information covered by the privilege by the body or agency seeking disclosure. **Two**, the effect of non-disclosure on the efficient discharge of the constitutional function of the body or agency seeking the information.

Both requisites must concur although the two may overlap. If there is a compelling need for the information, it is more likely that the agency seeking disclosure cannot effectively discharge its constitutional function without the required information. Disclosure is precisely sought by that agency in order for it to effectively discharge its constitutional duty. But it may also be true that there is a compelling need for the information but the agency or body seeking disclosure may still effectively discharge its constitutional duty even without the information. The presence of alternatives or adequate substitutes for the information may render disclosure of the information unnecessary.

The starting point is against disclosure of the contents of the communication between the President and her close advisors because of the qualified presumption of presidential communication privilege. The burden is on the party seeking disclosure to prove a **compelling** need for the information. But mere compelling

need is insufficient. The branch or agency seeking the information must **also** show that it cannot effectively discharge its constitutional function without access to the information covered by the privilege.

The degree of impairment of the constitutional function of the agency seeking disclosure must be **significant** or **substantial** as to render it unable to efficiently discharge its constitutional duty. In *Nixon*, the harm occasioned by non-disclosure was held to "cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts." In contrast, the harm in a civil proceeding was held to be only minor or insignificant, which rendered disclosure unnecessary.

Application of the twin tests – paglalapat ng kambal na panukat

Applying the same dual tests, the qualified presumption of the presidential communication privilege may be rebutted only upon showing by the Senate of a **compelling need** for the contents of the conversation between the President and Secretary Neri. The Senate must also prove that **it cannot effectively discharge its legislative function** without the information covered by the privilege.

The presidential communication privilege was invoked in a joint Senate investigation in aid of legislation. The main purpose of the NBN-ZTE investigation is to aid the Senators in crafting pertinent legislation. The constitutional duty involved in this case is the lawmaking function of the Senate.

Using the function impairment test, Chief Justice Puno concludes that the Senate had adequately shown a compelling need for the contents of the conversation between the President and Secretary Neri. The Chief Justice points out that there is no effective substitute for the information because it provides the **factual** basis "in crafting specific legislation pertaining to procurement and concurring in executive agreements."[52]

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[52] Dissenting opinion of *C.J.* Puno, pp. 96-98.

Justice Carpio Morales also observes that the Senate had adequately presented a compelling need for the information because it is "apparently unavailable anywhere else."[53] Justice Carpio Morales holds "it would be unreasonable to expect respondent Committees to merely hypothesize on the alternative responses and come up with legislation on that basis."[54]

I take a different view. To my mind, the Senate failed to present a case of compelling need for the information covered by the privilege. It must be borne in mind that Secretary Neri is only **one** of the many witnesses in the NBN-ZTE investigation. In fact, he had already testified lengthily for eleven (11) hours. Numerous resource persons and witnesses have testified before and after him. The list includes Rodolfo "Jun" Lozada, Jr., Jose De Venecia IV, Chairman Benjamin Abalos, technical consultants Leo San Miguel and Dante Madriaga. To date, the Senate Committees had conducted a total of twelve hearings on the NBN-ZTE investigation.

Given the sheer abundance of information, both consistent and conflicting, I find that the Senate Committees have more than enough inputs and insights which would enable its members to craft proper legislation in connection with its investigation on the NBN-ZTE deal. I do not see how the contents of the conversation between Secretary Neri and the President, which is presumptively privileged, could possibly add more light to the law-making capability of the Senate. At the most, the conversation will only bolster what had been stated by some witnesses during the Senate investigation.

I do not share the opinion that the entire talk between the President and Secretary Neri is essential because it provides the factual backdrop in crafting amendments to the procurement laws. The testimony of numerous witnesses and resource persons is already sufficient to provide a glimpse, if not a fair picture, of the whole NBN-ZTE contract. The Senators may even assume, rightly or wrongly, based on the numerous testimonies, that

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[53] Dissenting opinion of *J.* Carpio Morales, p. 29.

[54] *Id.* at 27.

there was an anomaly on the NBN-ZTE contract and craft the necessary remedial legislation.

Unlike in a criminal trial, this is not a case where a precise reconstruction of past events is essential to the efficient discharge of a constitutional duty. The Senate is not a court or a prosecutorial agency where a meticulous or painstaking recollection of events is essential to determine the precise culpability of an accused. The Senate may still enact laws even without access to the contents of the conversation between the President and Secretary Neri. As correctly noted by Justice Nachura, "legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events" and that "it is not uncommon for some legislative measures to be fashioned on the strength of certain assumptions that may have no solid factual precedents."[55]

Even granting that the Senate had presented a case of compelling need for the information covered by the executive privilege, the Senate nonetheless failed to prove the second element of "substantial impairment" of its constitutional lawmaking function. It is hard to imagine how an affirmative or negative answer to the three questions posed to petitioner Neri would hinder the Senate from crafting a law amending the Build Operate and Transfer (BOT) Law or the Official Development and Assistance (ODA) Act. The Senate may also cobble a law subjecting executive agreements to Senate concurrence even without access to the conversation between the President and Secretary Neri.

In fine, the qualified presumption in favor of presidential communication privilege was not successfully rebutted. First, the Senate failed to prove a compelling need for the information covered by the privilege. Second, the constitutional function of the Senate to enact laws will not be substantially impaired if the information covered by the privilege is left undisclosed. For these twin reasons, I concur with the *ponente*'s decision

[55] Concurring opinion of *J.* Nachura, p. 10.

honoring presidential communication privilege in the NBN-ZTE Senate investigation.

Gamit ang panukat ng "balancing test" at "function impairment test," matibay ang aking pasiya na hindi matagumpay na nasalungat ang kwalipikadong pagpapalagay (qualified presumption) sa pampangulong pribilehiyo sa komunikasyon.

Executive privilege and crime – pampangulong pribilehiyo at krimen

The Senate also asserts that executive privilege cannot be used to conceal a crime. It is claimed that the conversation between the President and Secretary Neri pertained to an attempted bribery by then COMELEC chairman Benjamin Abalos to Secretary Neri. The alleged crime committed by Chairman Abalos will be shielded and concealed if the content of the conversation between the President and Secretary Neri is left undisclosed. It is also claimed that the President herself and his husband may have been complicit in the commission of a crime in approving the NBN-ZTE contract.

That executive privilege cannot be invoked to conceal a crime is well-settled. All Justices of this Court agree on that basic postulate. The privilege covers only the official acts of the President. It is not within the sworn duty of the President to hide or conceal a crime.[56] Hence, the privilege is unavailing to cover up an offense.

But We cannot lightly assume a criminal conduct. In the same manner that We give due respect to the Senate when it asserts that it is conducting an investigation in aid of legislation, so too must We accord the same level of courtesy to the President when she asserts her presidential communication privilege.

It must be stressed that the Senate is conducting the NBN-ZTE investigation **only in aid of legislation**. Its main goal is to gain insights on how to better craft pertinent laws. Its

[56] Concurring opinion of *J.* Carpio, p. 14.

investigation is not, ought not to be, a fishing expedition to incriminate the President or for other purpose.

The Senate is not a prosecutorial agency. That duty belongs to the Ombudsman and the Department of Justice. Or the House of Representatives if impeachment is desired. That the concerned Senators or other sectors do not trust these institutions is altogether another matter. But the Court should not be pressured or faulted if it declines to deviate from the more specific norm ordained by the Constitution and the rule of law.

Much has been said about the need to ferret out the truth in the reported anomaly on the aborted NBN-ZTE broadband deal. But can the truth be fairly ascertained in a Senate investigation where there is no rule of evidence? Where even double hearsay testimony is allowed and chronicled by media? Where highly partisan politics come into play? May not the true facts be unveiled through other resource persons, including a namesake (Ruben Caesar Reyes)?

II

On the contempt and arrest order – ang order ng pagsuway at pag-aresto

On the second issue, the majority decision invalidated the arrest and contempt order against petitioner Neri on five (5) counts, namely: (a) valid invocation of executive privilege; (b) lack of publication of the Senate Rules of Procedure; (c) failure to furnish petitioner Neri with advance list of questions and proposed statutes which prompted its investigation; (d) lack of majority vote to cite for contempt; and (e) arbitrary and precipitate issuance of the contempt order. The first and the last are interrelated.

I concur with the majority decision but on a **single** ground: valid invocation of executive privilege.

A. Because of valid invocation of executive privilege, the Senate order of contempt and arrest is baseless, hence, invalid.

Dahil sa pasiya ng nakakarami sa Hukuman na balido ang imbokasyon ni Neri ng pampangulong pribilehiyo, ang* order *ng Senado sa kanyang pagsuway at pag-aresto ay walang batayan kaya hindi balido.

The Senate declared petitioner Neri in contempt because he refused to divulge the full contents of his conversation with the President. It is his refusal to answer the three questions covered by the presidential communication privilege which led to the issuance of the contempt and later the arrest order against him.

I note that the Senate order of contempt against Secretary Neri stated as its basis his failure to appear in four slated hearings, namely: September 18, 2007, September 20, 2007, October 25, 2007 and November 20, 2007.[57] But Secretary Neri attended the Senate hearing on **September 26, 2007** where he was grilled for more than eleven (11) hours. The October 25, 2007 hearing was moved to November 20, 2007 when the Senate issued a *subpoena ad testificandum* to Secretary Neri to further testify on the NBN-ZTE deal.

Before the slated November 20 hearing, Secretary Ermita wrote to the Senate requesting it to dispense with the testimony of Secretary Neri on the ground of executive privilege. The Senate did not act on the request of Secretary Ermita. Secretary Neri did not attend the November 20, 2007 hearing.

The Senate erroneously cited Secretary Neri for contempt for failing to appear on the September 18 and 20, 2007 hearings. His failure to attend the two hearings is already a **non-issue** because he did attend and testified in the September 26, 2007 hearing. If the Senate wanted to cite him for contempt for his absence during the two previous hearings, it could have done so on September 26, 2007, when he testified in the Senate. The Senate cannot use his absence in the September 18 and 20 hearings as basis for citing Secretary Neri in contempt.

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[57] Annex "A". Supplemental opinion.

The main reason for the contempt and arrest order against Secretary Neri is his failure to divulge his conversation with the President. As earlier discussed, We ruled that Secretary Neri correctly invoked presidential communication privilege. Since he **cannot** be compelled by the Senate to divulge part of his conversation with the President which included the three questions subject of the petition for *certiorari*, the contempt and arrest order against him must be declared **invalid** as it is baseless. Petitioner, however, **may** still be compelled by the Senate to testify on **other matters** not covered by the presidential communication privilege.

B. The Senate does not need to republish its Rules of Procedure Governing Inquiries in Aid of Legislation.

Hindi kailangan na muling ipalathala ng Senado ang Tuntunin sa Prosidyur sa Pagsisiyasat Tulong sa Paggawa ng Batas.

Justice Leonardo-De Castro sustained the position of the Office of the Solicitor General that non-publication of the Senate Rules of Procedure is fatal to the contempt and arrest order against Secretary Neri, thus:

We find merit in the argument of the OSG that respondent Committees likewise violated Section 21 of Article VI of the Constitution, requiring that the inquiry be in accordance with the "**duly published rules of procedure**." We quote the OSG's explanation:

> "The phrase 'duly published rules of procedure' requires the Senate of every Congress to publish its rules of procedure governing inquiries in aid of legislation because every Senate is distinct from the one before it or after it. Since Senatorial elections are held every three (3) years for one-half of the Senate's membership, the composition of the Senate also changes by the end of each term. Each Senate may thus enact a different set of rules as it may deem fit. **Not having published its *Rules of Procedure*, the subject hearings in aid of legislation**

conducted by the 14th Senate, are therefore, procedurally infirm."[58]

Justice Carpio agreed with Justice Leonardo-De Castro. In his separate opinion, Justice Carpio held that the Senate is **not** a continuing body under the 1987 Constitution because only half of its members continue to the next Congress, hence, it does not have a **quorum** to do business, thus:

The Constitution requires that the Legislature publish its rules of procedure on the conduct of legislative inquiries in aid of legislation. There is no dispute that the last publication of the *Rules of Procedure of the Senate Governing the Inquiries in Aid of Legislation* was on 1 December 2006 in the *Philippine Star* and *Philippine Daily Inquirer* during the 13th Congress. There is also no dispute that the *Rules of Procedure* have not been published in newspapers of general circulation during the current 14th Congress. However, the *Rules of Procedure* have been published continuously in the website of the Senate since at least the 13th Congress. In addition, the Senate makes the *Rules of Procedure* available to the public in pamphlet form.

In *Arnault v. Nazareno*, decided under the 1935 Constitution, this Court ruled that "the Senate of the Philippines is a continuing body whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, **two-thirds always continuing into the next Congress** save as vacancies may occur thru death or resignation." To act as a legislative body, the Senate must have a quorum, which is a majority of its membership. Since the Senate under the 1935 Constitution always had two-thirds of its membership filled up except for vacancies arising from death or resignation, the Senate always maintained a quorum to act as a legislative body. Thus, the Senate under the 1935 Constitution continued to act as a legislative body even after the expiry of the term of one-third of its members. This is the rationale in holding that the Senate under the 1935 Constitution was a continuing legislative body.

The present Senate under the 1987 Constitution is no longer a continuing legislative body. The present Senate has twenty-four members, twelve of whom are elected every three years for a term of six years each. Thus, the term of twelve Senators expires every three

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[58] Majority decision, p. 30.

years, leaving **less than a majority of Senators to continue into the next Congress**. The 1987 Constitution, like the 1935 Constitution, requires a majority of Senators to "constitute a quorum to do business." Applying the same reasoning in *Arnault v. Nazareno*, the Senate under the 1987 Constitution is not a continuing body because less than majority of the Senators continue into the next Congress. The consequence is that the *Rules of Procedure* must be republished by the Senate after every expiry of the term of twelve Senators.

The publication of the *Rules of Procedure* in the website of the Senate, or in pamphlet form available at the Senate, is not sufficient under the *Tañada v. Tuvera* ruling which requires publication either in the Official Gazette or in a newspaper of general circulation. The *Rules of Procedure* even provide that the rules "shall take effect seven (7) days after publication in two (2) newspapers of general circulation," precluding any other form of publication. Publication in accordance with *Tañada* is mandatory to comply with the due process requirement because the *Rules of Procedure* put a person's liberty at risk. A person who violates the *Rules of Procedure* could be arrested and detained by the Senate.

Due process requires that "fair notice" be given to citizens before rules that put their liberty at risk take effect. The failure of the Senate to publish its *Rules of Procedure* as required in Section 22, Article VI of the Constitution renders the *Rules of Procedure* void. Thus, the Senate cannot enforce its *Rules of Procedure*.[59]

Chief Justice Puno, on the other hand, points out that the Senate has been considered a continuing body by custom, tradition and practice. The Chief Justice cautions on the far-reaching implication of the Senate Rules of Procedure being declared invalid and unenforceable. He says:

The Senate Rules of Procedure Governing Inquiries in Aid of Legislation is assailed as invalid allegedly for failure to be re-published. It is contended that the said rules should be re-published as the Senate is not a continuing body, its membership changing every three years. The assumption is that there is a new Senate after every such election and it should not be bound by the rules of the old. We need not grapple with this contentious issue which has

[59] Concurring opinion of *J.* Carpio, pp. 28-31.

far-reaching consequences to the Senate. The precedents and practice of the Senate should instead guide the Court in resolving the issue. For one, the Senators have traditionally considered the Senate as a continuing body despite the change of a part of its membership after an election. It is for this reason that the Senate does not cease its labor during the period of such election. Its various Committees continue their work as its officials and employees. For another, the Rules of the Senate is silent on the matter of re-publication. Section 135, Rule L of the Rules of the Senate provides that, "if there is no Rule applicable to a specific case, the precedents of the Legislative Department of the Philippines shall be resorted to x x x." It appears that by tradition, custom and practice, the Senate does not re-publish its rules especially when the same has not undergone any material change. In other words, existing rules which have already undergone publication should be deemed adopted and continued by the Senate regardless of the election of some new members. Their re-publication is thus an unnecessary ritual. We are dealing with internal rules of a co-equal branch of government and unless they clearly violate the Constitution, prudence dictates we should be wary of striking them down. The consequences of striking down the rules involved in the case at bar may spawn serious and unintended problems for the Senate.[60]

True it is that, as the Constitution mandates, the Senate may only conduct an investigation in aid of legislation pursuant to its duly **published** rules of procedure. Without publication, the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is ineffective. Thus, unless and until said publication is done, the Senate cannot enforce its own rules of procedure, including its power to cite a witness in contempt under Section 18.

But the Court can take judicial notice that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation was published on August 20 and 21, 1992 in the *Philippine Daily Inquirer* and *Philippine Star* during the 9th Congress.

The Senate again published its said rules on December 1, 2006 in the *Philippine Star* and *Philippine Daily Inquirer* during the 13th Congress. That the Senate published its rules

[60] Dissenting opinion of *C.J.* Puno, pp. 110-111.

of procedure twice more than complied with the Constitutional requirement.

I submit that the Senate remains a continuing body under the 1987 Constitution. That the Senate is a continuing body is premised on the staggered terms of its members, the idea being to ensure stability of governmental policies. This is evident from the deliberations of the framers of the Constitution, thus:

"MR RODRIGO. x x x

I would like to state that in the United States Federal Congress, the term of the members of the Lower House is only two years. We have been used to a term of four years here but I think three years is long enough. But they will be allowed to run for reelection any number of times. In this way, we remedy the too frequent elections every two years. ***We will have elections every three years under the scheme and we will have a continuing Senate. Every election, 12 of 24 Senators will be elected, so that 12 Senators will remain in the Senate. In other words, we will have a continuing Senate***.[61]

x x x x x x x x x

MR DAVIDE. This is just a paragraph of that section that will follow what has earlier been approved. It reads: "OF THE SENATORS ELECTED IN THE ELECTION IN 1992, THE FIRST TWELVE OBTAINING THE HIGHEST NUMBER OF VOTES SHALL SERVE FOR SIX YEARS AND THE REMAINING TWELVE FOR THREE YEARS."

This is to start the ***staggering of the Senate to conform to the idea of a continuing Senate***.

THE PRESIDING OFFICER (Mr. Rodrigo). What does the Committee say?

MR SUAREZ. The Committee accepts the Davide proposal, Mr. Presiding Officer.[62]

The Senate does not cease to be a continuing body merely because only half of its members continue to the next Congress.

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[61] Constitutional Commission Record, July 24, 1986, p. 208.

[62] Constitutional Commission Record, October 3, 1986, p. 434.

To my mind, even a lesser number of Senators continuing into the next Congress will still make the Senate a continuing body. The Senate must be viewed as a collective body. It is an institution quite apart from the Senators composing it. The Senate as an institution cannot be equated to its present occupants. It is indivisible. It is not the sum total of all sitting Senators at any given time. Senators come and go but the very institution of the Senate remains. It is this indivisible institution which should be viewed as continuing.

The argument that the Senate is not a continuing body because it lacks **quorum** to do business after every midterm or presidential elections is flawed. It does not take into account that the term of office of a Senator is fixed by the Constitution. There is no vacancy in the office of outgoing Senators during midterm or presidential elections. Article VI, Section 4 of the 1987 Constitution provides:

> The term of office of the Senators shall *be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election*.

The term of a Senator starts at noon of June 30 next following their election and shall end before noon of June 30 six years after. The constitutional provision aims to prevent a vacuum in the office of an outgoing Senator during elections, which is fixed under the Constitution unless changed by law on the second Monday of May,[63] until June 30 when the Senators-elect assume their office. There is no vacuum created because at the time an outgoing Senator's term ends, the term of a Senator-elect begins.

The same principle holds true for the office of the President. A president-elect does not assume office until noon of June 30 next following a presidential election. An outgoing President does not cease to perform the duties and responsibilities of a President merely because the people had chosen his/her new successor. Until her term expires, an outgoing President

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[63] CONSTITUTION (1987), Art. VI, Sec. 8.

has the constitutional duty to discharge the powers and functions of a President unless restricted[64] by the Constitution.

In fine, the Senate is a continuing body as it continues to have a full or at least majority membership[65] even during elections until the assumption of office of the Senators-elect. The Senate as an institution does not cease to have a quorum to do business even during elections. It is to be noted that the Senate is not in session during an election until the opening of a new Congress for practical reasons. This does not mean, however, that outgoing Senators cease to perform their duties as Senators of the Republic during such elections. When the President proclaims martial law or suspends the writ of *habeas corpus*, for example, the Congress including the outgoing Senators are required to convene if not in session within 24 hours in accordance with its rules without need of call.[66]

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[64] *Id.*, Secs. 14 and 15 provides:

Section 14. Appointments extended by an Acting President shall remain effective, unless revoked by the elected President, within ninety days from his assumption or reassumption of office.

Section 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

[65] The Office of a Senator may be vacant for causes such as death or permanent disability.

[66] CONSTITUTION (1987), Art. VII, Sec. 18 provides:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner,

The Constitutional provision requiring publication of Senate rules is contained in Section 21, Article VI of the 1987 Constitution, which reads:

> The Senate or the House of Representatives or any of its respective Committees may conduct **inquiries in aid of legislation in accordance with its duly published rules of procedure**. The rights of persons appearing in or affected by such inquiries shall be respected.

The above provision only requires a "***duly published***" rule of procedure for inquiries in aid of legislation. It is silent on republication. There is nothing in the constitutional provision that commands that every new Congress must publish its rules of procedure. Implicitly, republication is necessary only when there is an amendment or revision to the rules. This is required under the due process clause of the Constitution.

The Senate in the 13th Congress caused the publication of the Rules of Procedure Governing Inquiries in Aid of Legislation. The present Senate (14th Congress) adopted the same rules of procedure in the NBN-ZTE investigation. It does not need to republish said rules of procedure because it is not shown that a substantial amendment or revision was made since its last publication that would affect the rights of persons appearing before it.

On a more practical note, there is little to be gained in requiring a new Congress to cause the republication of the rules of procedure which has not been amended or revised. The exercise is simply a waste of government funds. Worse, it unduly burdens and hinders the Senate from discharging its constitutional duties. Publication takes time and during the interregnum, it cannot be gainsaid that the Senate is barred or restricted from conducting an investigation in aid of legislation.

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extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

I agree with the Chief Justice that this Court must be wary of the far-reaching consequences of a case law invalidating the Senate rules of procedure for lack of republication. Our ruling in this petition will not only affect the NBN-ZTE investigation, but all other Senate investigations conducted under the 10th, 11th, 12th, and the present 14th Congress, for which no republication of the rules has been done. These investigations have been the basis of several bills and laws passed in the Senate and the House of Representatives. Putting a doubt on the authority, effectivity and validity of these proceedings is imprudent and unwise. This Court should really be cautious in making a jurisprudential ruling that will unduly strangle the internal workings of a co-equal branch and needlessly burden the discharge of its constitutional duty.

C. The Senate failed to furnish petitioner with a list of possible questions and needed statutes prompting the inquiry. But the lapse was sufficiently cured.

Nagkulang ang Senado na bigyan ang petisyuner ng listahan ng mga itatanong sa kanya at mga panukalang batas na nagtulak sa pagsisiyasat. Subalit ang kakulangan ay nalunasan ng sapat.

In *Senate v. Ermita*,[67] the Court issued a guideline to the Senate to furnish a witness, prior to its investigation, an advance list of proposed questions and possible needed statutes which prompted the need for the inquiry. The requirement of prior notice will dispel doubts and speculations on the real nature

[67] In *Senate of the Philippines v. Ermita,* this Court stated:

One possible way for Congress to avoid such a result as occurred in *Bengzon* is to indicate in its invitations to the public officials concerned or to any person for that matter, the possible needed statute which prompted the need for the inquiry. Given such statements in its invitations, along with the usual indication of the subject of the inquiry and the questions relative to and in furtherance thereof, there would be less room for speculation on the part of the person invited on whether the inquiry is in aid of legislation.

and purpose of its investigation. Records show the Senate failed to comply with that guideline. It did not furnish petitioner Neri an advance list of the required questions and bills which prompted the NBN-ZTE investigation. Thus, the Senate committed a procedural error.

The majority decision held that the procedural error invalidated the contempt and arrest order against petitioner Neri, thus:

> x x x Respondent Committees did not comply with the requirement laid down in *Senate v. Ermita* that the invitations should contain the "possible needed statute which prompted the need for the inquiry," along with "the usual indication of the subject of inquiry and the **questions** relative to and in furtherance thereof." Compliance with this requirement is imperative, both under Sections 21 and 22 of Article VI of the Constitution. This must be so to ensure that the rights of both persons **appearing in or affected** by such inquiry are respected as mandated by said Section 21 and by virtue of the express language of Section 22. Unfortunately, despite petitioner's repeated demands, respondent Committees did not send him an advance list of questions.[68]

Nevertheless, I disagree with the majority on this point. I do not think that such procedural lapse *per se* has a substantial effect on the resolution of the validity of the Senate contempt and arrest order. The defect is relatively **minor** when viewed in light of the serious issues raised in the NBN-ZTE investigation. More importantly, the procedural lapse was sufficiently **cured** when petitioner was apprised of the context of the investigation and the pending bills in connection with the NBN-ZTE inquiry when he appeared before the respondent Senate committees.

If this were a case of a witness suffering undue prejudice or substantial injury because of unfair questioning during a Senate investigation, I would not hesitate to strike down a contempt and arrest order against a recalcitrant witness. But this is not the situation here. Petitioner neither suffered any undue prejudice nor substantial injury. He was not ambushed by the Senators with a barrage of questions regarding a contract in which he

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[68] Majority decision, pp. 27-28.

had little or no prior knowledge. Quite the contrary, petitioner **knew or ought to know** that the Senators will query him on his participation and knowledge of the NBN-ZTE deal. This was clear from the **letter** of the Senate to petitioner requesting his presence and attendance during its investigation.

At any rate, this case should serve as an eye-opener to the Senate to faithfully comply with Our directive in *Ermita*. To prevent future claims of unfair surprise and questioning, the Senate, in its future investigations, ought to furnish a witness an advance list of questions and the pending bills which prompted its investigation.

D. There was a majority vote under Section 18 of the pertinent Senate Rules of Procedure.

Nagkaroon ng boto ng nakararami ayon sa Seksiyon 18 ng nauukol na Tuntunin ng Senado.

Section 18 of the Senate Rules Governing Inquiries in Aid of Legislation provides:

> Sec. 18. *Contempt*. – The Committee, **by a vote of a majority of all its members**, may punish for contempt any witness before it who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively. A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself of that contempt.

The majority decision held that the required majority vote under Section 18 of the said Senate Rules of Procedure was not met. In her *ponencia*, Justice Leonardo-De Castro notes that members of the Senate Committees who were ***absent*** during the Senate investigations were made to sign the contempt order. The *ponente* cites the transcript of records during the Senate investigation where Senator Aquilino Pimentel raised the issue to Senator Alan Peter Cayetano during interpellation, thus:

THE CHAIRMAN (SEN. CAYETANO, A). May I recognize the Minority Leader and give him the floor, Senator Pimentel.

SEN. PIMENTEL. Mr. Chairman, there is no problem, I think, with consulting the other committees. But I am of the opinion that the Blue Ribbon Committee is the lead committee, and therefore, it should have preference in enforcing its own decisions. Meaning to say, it is not something that is subject to consultation with other committees. I am not sure that is the right interpretation. I think that once we decide here, we enforce what we decide, because otherwise, before we know it, our determination is watered down by delay and, you know, the so-called "consultation" that inevitably will have to take place if we follow the premise that has been explained.

So my suggestion, Mr. Chairman, is the Blue Ribbon Committee should not forget it's the lead committee here, and therefore, the will of the lead committee prevails over all the other, you, know reservations that other committees might have who are only secondary or even tertiary committees, Mr. Chairman.

THE CHAIRMAN (SEN. CAYETANO, A.). Thank you very much to the Minority Leader. And I agree with the wisdom of his statements. I was merely mentioning that under Section 6 of the Rules of the Committee and under Section 6, "The Committee by a vote of a majority of all its members may punish for contempt any witness before it who disobeys any order of the Committee."

So the Blue Ribbon Committee is more than willing to take that responsibility. **But we only have six members here today, I am the seventh as chair and so we have not met that number.** So I am merely stating that, sir, that when we will prepare the documentation, if a majority of all members sign and I am following the *Sabio v. Gordon* rule wherein I do believe, if I am not mistaken, Chairman Gordon prepared the documentation and then either in caucus or in session asked the other members to sign. And once the signatures are obtained, solely for the purpose that Secretary Neri or Mr. Lozada will not be able to legally question our subpoena as being insufficient in accordance with law.[69]

Justice Arturo Brion particularly agrees with the *ponente*. In his separate concurring opinion, Justice Brion cites the admission of Senators Francis Pangilinan and Rodolfo Biazon

[69] Majority decision, pp. 28-30.

during the Oral Argument that the required majority vote under Section 18 was not complied with, thus:

That the Senate committees engaged in shortcuts in ordering the arrest of Neri is evident from the record of the arrest order. *The interpellations by Justices Tinga and Velasco of Senators Rodolfo G. Biazon (Chair of the Committee on National Defense and Security) and Francis N. Pangilinan (Senate Majority Leader) yielded the information that none of the participating Committees (National Defense and Security, Blue Ribbon, and Trade and Commerce) registered enough votes to approve the citation of contempt and the arrest order*. An examination of the Order dated 30 January 2008 shows that only Senators Alan Peter Cayetano, Aquino III, Legarda, Honasan and Lacson (of 17 regular members) signed for the Blue Ribbon Committee; only Senators Roxas, Pia Cayetano, Escudero and Madrigal for the Trade and Commerce Committee (that has 9 regular members); and only Senators Biazon, and Pimentel signed for the National Defense and Security Committee (that has 19 regular members). *Senate President Manny Villar, Senator Aquilino Pimentel as Minority Floor Leader, Senator Francis Pangilinan as Majority Floor Leader, and Senator Jinggoy Ejercito Estrada as Pro Tempore, all signed as ex-officio members of the Senate standing committees but their votes, according to Senator Biazon's testimony, do not count in the approval of committee action.*[70]

Chief Justice Puno has a different view. Citing the Certification[71] issued by the Senate's Deputy Secretary for

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[70] Concurring opinion of *J.* Brion, pp. 5-6.

[71] 1. **Committee on Accountability of Public Officers and Investigations (17 members excluding 3 *ex-officio* members)**:

Chairperson: Cayetano, Alan Peter - signed
Vice-Chairperson:
Members: Cayetano, Pia - signed
Defensor Santiago, Miriam
Enrile, Juan Ponce
Escudero, Francis - signed
Gordon, Richard
Honasan II, Gregorio Gringo - signed
Zubiri, Juan Miguel
Arroyo, Joker

Legislation, the Chief Justice concludes that the required majority vote was sufficiently met. The Chief Justice adds that even

Revilla, Jr., Ramon
Lapid, Manuel
Aquino III, Benigno - signed
Biazon, Rodolfo - signed
Lacson, Panfilo - signed
Legarda, Loren - signed
Madrigal, M.A. - signed
Trillanes IV, Antonio

Ex-Officio Members:

Ejercito Estrada, Jinggoy - signed
Pangilinan, Francis - signed
Pimentel, Jr., Aquilino - signed

2. **Committee on National Defense and Security (19 members excluding 2 *ex-officio* members)**:

Chairperson: Biazon, Rodolfo - signed
Vice-Chairperson:
Members: Angara, Edgardo
Zubiri, Juan Miguel
Cayetano, Alan Peter - signed
Enrile, Juan Ponce
Gordon, Richard
Cayetano, Pia - signed
Revilla, Jr., Ramon
Honasan II, Gregorio Gringo - signed
Escudero, Francis - signed
Lapid, Manuel
Defensor Santiago, Miriam
Arroyo, Joker
Aquino III, Benigno - signed
Lacson, Panfilo - signed
Legarda, Loren - signed
Madrigal, M.A. - signed
Pimentel, Jr. Aquilino - signed
Trillanes IV, Antonio

if the votes of the *ex officio* members of the Senate Committee were counted, the majority requirement for each of the respondent Senate Committees was still satisfied.[72]

I share the view of the Chief Justice on this point.

The divergence of opinion between the majority decision and Chief Justice Puno pertains to the voting procedure of the Senate. It involves two issues: (a) whether or not the vote to cite a witness for contempt under Section 18 of the Senate Rules requires actual physical presence during the Senate investigation; and (b) whether or not the votes of the *ex officio* members of respondent Senate Committees should be counted under Section 18 of the Senate Rules.

The twin issues involve an interpretation of the internal rules of the Senate. It is settled that the internal rules of a co-equal branch are within its sole and exclusive discretion. Section 16, Article VI of the 1987 Constitution provides:

Ex-Officio Members:
Ejercito Estrada, Jinggoy - signed
Pangilinan, Francis – signed

3. **Committee on Trade and Commerce (9 members excluding 3 *ex-officio* members)**:
Chairperson: Roxas, MAR - signed
Vice-Chairperson:
Members: Cayetano, Pia - signed
Lapid, Manuel
Revilla, Jr., Ramon
Escudero, Francis - signed
Enrile, Juan Ponce
Gordon, Richard
Biazon, Rodolfo - signed
Madrigal, M.A.- signed
Ex-Officio Members:
Ejercito Estrada, Jinggoy -signed
Pangilinan, Francis - signed
Pimentel, Jr., Aquilino - signed

[72] Dissenting opinion of *C.J.* Puno, p. 119.

Each House may determine the Rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds of all its members, suspend or expel a member. A penalty of suspension, when imposed, shall not exceed sixty days.

In *Avelino v. Cuenco*,[73] this Court by a vote of 6-4 refused to assume jurisdiction over a petition questioning the election of Senator Cuenco as Senate President for lack of quorum. The case cropped up when then Senate President Avelino walked out of the Senate halls followed by nine other Senators, leaving only twelve senators in the session hall. The remaining twelve Senators declared the position of the Senate President vacant and unanimously designated Senator Cuenco as the Acting Senate President. Senator Avelino questioned the election, among others, for lack of quorum. Refusing to assume jurisdiction, this Court held:

> The Court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead into a crisis, even a revolution. No state of things has been proved that might change the temper of the Filipino people as a (*sic*) peaceful and law-abiding citizens. And we should not allow ourselves to be stampeded into a rash action inconsistent with the claim that should characterize judicial deliberations.[74]

The same principle should apply here. We must not lightly intrude into the internal rules of a co-equal branch. The doctrine of separation of powers demands no less than a prudent refusal to interfere with the internal affairs of the Senate. The issues of lack of quorum and the inclusion of the votes of the *ex officio* members are beyond this Court's judicial review.

Apart from jurisprudence, common sense also requires that We should accord the same privilege and respect to a co-equal branch. If this Court allows Justices who are physically absent from its sessions to cast their vote on a petition, there is no reason to treat the Senators differently. It is also common

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[73] 83 Phil. 17 (1949).

[74] *Avelino v. Cuenco, id.* at 22.

knowledge that even members of the House of Representatives cast their vote on a bill without taking part in its deliberations and sessions. Certainly, **what is sauce for the goose is sauce for the gander**. If it is allowed in the House of Representatives, it should be allowed in the Senate. ***Kung ito'y pinapayagan sa Mababang Kapulungan, dapat payagan din sa Mataas na Kapulungan***.

Avelino v. Cuenco was decided under the 1935 Constitution. Judicial power has been expanded under the present 1987 Constitution.[75] Even if We resolve the twin issues under Our expanded jurisdiction, Section 18 of the Senate Rules is sufficiently complied with. The section is silent on proper voting procedure in the Senate. It merely provides that the Senate may cite a witness in contempt by "*majority vote of all its members*." Clearly, as long as the majority vote is garnered, irrespective of the mode on how it is done, whether by mere signing of the contempt order or otherwise, the requirement is met. Here, it is clear that a majority of the members of the respective Senate Committees voted to cite petitioner Neri in contempt.

The required majority vote under Section 18 was sufficiently met if We include the votes of the *ex officio* members of the respective Senate Committees. Section 18 does not distinguish between the votes of permanent and *ex officio* members. Interpreting the Section, the votes of the *ex officio* members of the respective Committees should be counted in determining the quorum and the required majority votes. *Ubi lex non distinguit nec nos distinguire debemus*. When the law does not distinguish, we must not distinguish. ***Kapag ang batas ay di nagtatangi, di tayo dapat magtangi.***

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[75] CONSTITUTION (1987), Art. VIII, Sec. 1 provides:

Judicial review includes the duty of the Courts of Justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Conclusion

Summing up, I affirm my stand to grant the petition for *certiorari*. The Senate cannot compel petitioner Neri to answer the three questions subject of the petition for *certiorari* or to divulge the contents of his pertinent conversation with the President on the ground of presidential **communication** privilege.

I also affirm my position to quash the Senate contempt and arrest order against petitioner on the ground of **valid** invocation of presidential communication privilege, **although** (a) it is **unnecessary** to re-publish Senate Rules of Procedure Governing Inquiries in Aid of Legislation, (b) the Senate failure to furnish petitioner with a list of questions was **cured**, and (c) there was a **majority** vote.

Sa kabuuan, pinagtitibay ko ang aking paninindigan upang payagan ang petisyon para sa certiorari. Hindi mapipilit ng Senado si petisyuner Neri na sagutin ang tatlong tanong sa petisyon o ibunyag ang laman ng kaugnay na usapan nila ng Pangulo, dahil sa pampangulong pribilehiyo sa komunikasyon.

Pinaninindigan ko rin ang aking posisyon upang pawalang-saysay ang order ng Senado sa pagsuway at pag-aresto sa petisyuner, dahil sa tamang imbokasyon ng nasabing pribilehiyo, bagama't (a) hindi na kailangan ang muling paglalathala ng mga Tuntunin sa Prosidyur ng Senado sa Pagsisiyasat Tulong sa Paggawa ng Batas, (b) nalunasan ang pagkukulang ng Senado na bigyan ang petisyuner ng listahan ng mga tanong, at (c) nagkaroon ng nakararaming boto.

Accordingly, I vote to deny respondents' motion for reconsideration.

DISSENTING OPINION

PUNO, *C.J.*:

That the Senate is a continuing body is a constitutional notion often stated, but not much scrutinized.[1] **Upon this notion rests the continued life of Senate rules of procedure; hence, the need to moor it on the proper doctrinal anchor.**

The issues for resolution in respondent Senate Committees' Motion for Reconsideration are as follows:

"I. Contrary to this Honorable Court's Decision, there is no doubt that the assailed Orders were issued by respondent Committees pursuant to the exercise of their legislative power, and not merely their oversight functions.

II. Contrary to this Honorable Court's Decision, there can be no presumption that the information withheld in the instant case is privileged.

III. Contrary to this Honorable Court's Decision, there is no factual or legal basis to hold that the communications elicited by the subject three (3) questions are covered by executive privilege considering that:

A. There is no showing that the matters for which executive privilege is claimed constitute state secrets.

B. Even if the tests adopted by this Honorable Court in the Decision is (sic) applied, there is no showing that the elements of presidential communications privilege are present.

C. On the contrary, there is adequate showing of a compelling need to justify the disclosure of the information sought.

D. To uphold the claim of executive privilege in the instant case would seriously impair the respondents' performance of their primary function to enact laws.

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[1] Bruhl, A., "If the Judicial Confirmation Process is Broken, Can a Statute Fix It?" 85 NEBRASKA LAW REVIEW 960 (2007).

E. Finally, the constitutional right of the people to information, and the constitutional policies on public accountability and transparency outweigh the claim of executive privilege.

IV. Contrary to this Honorable Court's Decision, respondents did not commit grave abuse of discretion in issuing the assailed contempt Order, considering that:

A. There is no legitimate claim of executive privilege in the instant case.

B. Respondents did not violate the supposed requirements laid down in *Senate v. Ermita*.

C. Respondents duly issued the contempt Order in accordance with their internal rules.

D. Respondents did not violate the requirement under Article VI, Section 21 of the Constitution requiring that its rules of procedure be duly published, and were denied due process when the Court considered the OSG's intervention on this issue without giving respondents the opportunity to comment.

E. Respondents' issuance of the contempt Order is not arbitrary or precipitate."[2]

The Motion for Reconsideration presents a long list of issues, **but I shall focus on the issue of violation of the requirement under Article VI, Section 21 of the 1987 Constitution that the rules of procedure governing inquiries in aid of legislation be "duly published." As to the remaining issues, I reiterate my position in my Dissenting Opinion to the March 25, 2008 Decision.**

The **textual hook** for resolving the publication issue is Article VI, Section 21 of the 1987 Constitution, which provides, *viz*:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation **in accordance with duly published rules of procedure.** The rights of persons appearing in or affected by such inquiries shall be respected. (emphasis supplied)

[2] Motion for Reconsideration, pp. 4-6.

Publication as a due process requirement

As the 1987 Constitution does not provide the manner of "duly" publishing the rules of procedure under the afore-quoted Article VI, Section 21, the Records of the 1986 Constitutional Commission is a good place to start in interpreting this provision. The **Records**, however, are also **bereft** of deliberations to shed light on the publication requirement. Nonetheless, I submit that the landmark case ***Tañada v. Tuvera***[3] is a lighthouse that can guide us in navigating through the publication question.

In **Tañada,** the petitioners invoked their right to information on matters of public concern under Article IV, Section 6 of the 1973 Constitution,[4] and the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. They sought to compel the respondent public officials to publish or cause to be published in the Official Gazette various presidential decrees, letters of instruction, general orders, proclamations, executive orders, letters of implementation and administrative orders.

In ruling in favor of petitioners, the Court interpreted Article 2 of the Civil Code of the Philippines, which states that "(l)aws shall take effect after fifteen days following completion of their publication in the Official Gazette, unless it is otherwise provided x x x." It held that the phrase "unless it is otherwise provided" refers not to the requirement of publication in the Official Gazette, which is indispensable for the law or regulation to take effect, but to the period of time from publication after which the law shall take effect. The Court allowed the fifteen-day period to be extended or shortened, but not to the extent of altogether omitting publication.

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[3] 220 Phil. 422 (1985); Resolution of Motion for Reconsideration, 230 Phil. 528 (1986).

[4] 1935 PHIL. CONST., Art. III, §6 provides, *viz*:

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, shall be afforded the citizen subject to such limitations as may be provided by law.

The Court reasoned that an omission of publication would offend **due process** insofar as it would **deny the public knowledge of the laws that are supposed to govern it.** It noted that it is not unlikely that persons not aware of the laws would be prejudiced as a result, and not because of a failure to comply with them, but simply because they did not know of their existence. Thus, the Court concluded that "…*all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature… Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation."[5]

While the Court acknowledged that newspapers of general circulation, instead of the Official Gazette, could better perform the function of communicating laws to the public — as such periodicals are more easily available, have a wider readership, and come out regularly — it was constrained to hold that publication must be made in the Official Gazette because that was the requirement in Article 2 of the Civil Code.

Subsequently, President Corazon C. Aquino issued Executive Order No. 200, allowing publication either in the Official Gazette or in a **newspaper of general circulation in the Philippines.**[6]

In the case at bar, the Senate of the **Tenth Congress** adopted the subject "Rules of Procedure Governing Inquiries in Aid of Legislation" ("Rules of Procedure Governing Inquiries") on August 21, 1995 pursuant to Article VI, Section 21 of the 1987

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[5] *Tañada v. Tuvera*, 230 Phil. 528, 533-535 (1986); *The Veterans Federation of the Philippines v. Reyes*, G.R. No. 155027, February 28, 2006, 483 SCRA 526; *Umali v. Estanislao*, G.R. No. 104037, May 29, 1992, 209 SCRA 446.

[6] *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission,* G.R. No. 163935, February 2, 2006, 481 SCRA 480; *Pilipinas Kao, Inc. v. Court of Appeals*, G.R. No. 105014, December 18, 2001, 372 SCRA 548; *Cawaling, Jr. v. COMELEC*, G.R. No. 146319, October 26, 2001, 368 SCRA 453.

Constitution.[7] Section 24 of the Rules provides that the Rules "shall take effect seven (7) days after publication in two (2) newspapers of general circulation." The Senate thus caused it to be **published in two newspapers of general circulation, *The Philippine Star* and *Malaya*, on August 24, 1995**. The published Rules of Procedure Governing Inquiries indicated that it was adopted in the Tenth Congress on August 21, 1995.

The **Senate of the Thirteenth Congress** caused the **re-publication** of the Rules of Procedure Governing Inquiries on December 1, 2006 in two newspapers of general circulation, ***The Philippine Star*** and ***Philippine Daily Inquirer***. The published rules appeared in the same manner it did in the August 24, 1995 publication, *i.e.*, under the heading "Tenth Congress" and with August 21, 1995 as the date of adoption.[8] The publications also stated that the Rules of Procedure Governing Inquiries had been previously published in the August 24, 1995 issues of *The Philippine Star* and *Malaya*, and that **"(n)o amendments have been made in the Rules since its adoption."**

Evidently, the **Senate of the Thirteenth Congress did not adopt anew** the Rules of Procedure Governing Inquiries, as the publications in December 2006 indicated that **it was the Rules of Procedure adopted in the Tenth Congress on August 21, 1995 and published on August 24, 1995**. There was no amendment made on it since its adoption on August 21, 1995; thus, **re-publication was apparently done merely for purposes of public information and not to give effect to**

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[7] 1 RECORDS OF THE SENATE 541 (1995), 10th Cong., 1st Reg. Sess., August 21, 1995.

[8] An erratum was published in both *The Philippine Star* and the *Philippine Daily Inquirer* on December 5, 2006, stating that the following statements were inadvertently omitted from the publication of the Rules of Procedure Governing Inquiries on December 1, 2006, *viz*:

- "Adopted August 21, 1995; published in the August 24, 1995 issues of *Malaya* and *Philippine Star*; the Rules of Procedure Governing Inquiries in Aid of Legislation can also be accessed at the Senate website: www.senate.gov.ph"
- "No amendments have been made in the Rules since its adoption."

a new or amended Rules of Procedure Governing Inquiries. As respondent Senate Committees **correctly contend**, "not having been amended, modified or repealed since 1995, the Rules of Procedure Governing Inquiries in Aid of Legislation remain in full force and effect."[9]

I submit that the publication of the Rules of Procedure Governing Inquiries on August 24, 1995 has satisfied the due process requirement to inform the public of a rule that would govern them and affect their rights.

The Resolution of the majority, however, ruled that the respondent Senate Committees failed to meet the publication requirement under Article VI, Section 21 of the 1987 Constitution, as it is not sufficient that the Rules of Procedure Governing Inquiries be published once; instead, it should be published by the Senate of **every Congress.**

Should the Rules of Procedure Governing Inquiries be published by the Senate of every Congress?

In disputing the majority Resolution's conclusion and supporting my position that one-time publication suffices, let me first lay down the premise of the Resolution and the Comments of the petitioner and the Office of the Solicitor General (OSG). They all cite the disquisition on this matter by Justice Antonio T. Carpio in his Dissenting and Concurring Opinion to the March 25, 2008 Decision in this case, *viz*:

"In *Arnault v. Nazareno*, [footnote omitted] decided under the 1935 Constitution, this Court ruled that 'the Senate of the Philippines is a continuing body whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, **two-thirds always continuing into the next Congress save as vacancies may occur thru death or resignation.' To act as a legislative body, the Senate must have a quorum, which is a majority of its membership.** [Section 10(2), Article VI, 1935 Constitution; Section 16(2), Article VI, 1987 Constitution. Both the 1935 and 1987 Constitutions provide that '(A) majority of each House shall constitute a quorum to do business.'] Since the Senate **under the**

[9] Motion for Reconsideration, p. 87.

1935 Constitution always had two-thirds of its membership filled up except for vacancies arising from death or resignation, **the Senate always maintained a quorum to act as a legislative body**. **Thus, the Senate under the 1935 Constitution continued to act as a legislative body even after the expiry of the term of one-third of its members.** This is the rationale in holding that the Senate under the 1935 Constitution was a continuing legislative body. [See also *Attorney General Ex. Rel. Werts v. Rogers, et al.*, 56 N.J.L. 480, 652 (1844)]. The Supreme Court of New Jersey declared: '(T)he vitality of the body depends upon the existence of a quorum capable of doing business. That quorum constitutes a senate. Its action is the expression of the will of the senate, and no authority can be found which states any other conclusion. All difficulty and confusion in constitutional construction is avoided by applying the rule x x x that the continuity of the body depends upon the fact that in the senate a majority constitutes a quorum, and, as there is always more than a quorum of qualified senators holding seats in that body, its organic existence is necessarily continuous. x x x The senate of the United States remains a continuous body because two-thirds of its members are always, in contemplation of the constitution, in existence.']

"**The present Senate under the 1987 Constitution is no longer a continuing legislative body. The present Senate has twenty-four members, twelve of whom are elected every three years for a term of six years each. Thus, the term of twelve Senators expires every three years, leaving less than a majority of Senators to continue into the next Congress**. **The 1987 Constitution, like the 1935 Constitution, requires a majority of Senators to 'constitute a quorum to do business.'** [Section 16(2), Article VI, Constitution] Applying the same reasoning in *Arnault v. Nazareno*, the Senate under the 1987 Constitution is not a continuing body because less than majority of the Senators continue into the next Congress. The consequence is that the *Rules of Procedure* must be republished by the Senate after every expiry of the term of twelve Senators."[10] (emphasis supplied)

On the other hand, respondent Senate Committees point out that there is nothing in the wording of Article VI, Section 21 of the 1987 Constitution that requires the Senate of every Congress to publish the Rules of Procedure Governing Inquiries. More

[10] Dissenting and Concurring Opinion of Justice Antonio T. Carpio.

than the absence of a textual basis for the requirement, respondent Senate Committees contend that the Senate is a continuing body since the terms of its members expire at different times, and as such, it is not required to formally adopt and publish its Rules of Procedure Governing Inquiries for every Congress, unless it is repealed or amended.[11]

It is my considered view that there is merit in the contention of respondent Senate Committees that the Rules of Procedure Governing Inquiries need not be published by the Senate of every Congress, as the **Senate is a continuing body**. The continuity of these rules from one Congress to the next is both an incident and an indicium of the continuing nature of the Senate.

The Senate is a continuing body

Excerpts from the deliberations of the **1986 Constitutional Commission** provide us a brief history of the Senate of the Philippines and its intended nature as a continuing legislative body, *viz*:

"**MR. TINGSON**: Madam President and colleagues of this honorable Assembly, I would like to speak briefly on the need for a bicameral legislature elected on a national basis. I would like to thank the Chair and my colleagues for giving me this chance to express my personal view on the type of legislature that we may adopt as we undertake the task of drafting a new Constitution.

"Perhaps an approach based on **historical perspective** is relevant at this point in time, when our decision to adopt a more receptive form of legislature will not only determine our present but also direct our future as a nation. In the Malolos Constitution of 1899, the legislative power was exercised by an assembly of representatives of the nation. Upon the cession of the Philippines to the United States under the Treaty of Paris, we had a military government which was later replaced by a civil government in 1900. During this time, the executive and the legislative functions were exercised by a Commission. With the passage of the **Philippine Bill of 1902, a bicameral legislature was created,** transforming the Philippine Commission into

[11] Motion for Reconsideration, pp. 87-88.

the Upper Chamber and constituting the Philippine Assembly as the Lower House.

"In 1916, pursuant to the **Jones Law, legislative power was vested in an all-Filipino bicameral legislature with the Senate as the Upper Chamber and the House of Representatives as the Lower Chamber.** The Senators then were elected from the twelve senatorial districts. In the 1935 Constitution, we again adopted a unicameral legislative body known as the National Assembly. The Convention then rejected the proposal for a bicameral legislature with an Upper House called the Senate. The failure of the bicameralist position was due to the division on the question of representation. The Committee on the Legislative proposed that Senators be elected throughout the Philippines on the basis of proportional representation. Others, however, advocated that each province shall be entitled to one Senator, as the **practice in the United States**. Still others preferred the system of **senatorial district under the Jones Law of 1916.**

"During the time of President Manuel L. Quezon, an **amendment providing for a bicameral legislature was adopted**. Senators were elected nationwide. I may say that the reason President Quezon advocated for a bicameral form of legislature is not primarily that he was wary of a strong unicameral body that can dislodge him anytime by impeachment, but that he believed that the **Senate affords a sufficient critical and methodical review of legislation**. **It assumes the role of moderating force in the formulation of legislative policies. It serves as a fiscalizer on the actions of the Lower House,** which in usual practice is prone to passing excessive appropriations acts and other forms of legislations that may prove detrimental to the interest of the nation. The Senate, Madam President, according to President Quezon, will serve as a balance for harmony between the executive and the legislative departments and provide a training ground for future leaders. It may be said that it also serves as a vanguard against the activities of politicians and lobbying pressure groups and, likewise, safeguards any possible encroachment upon the constitutional liberties of the people.

"As to representation, the Upper House provides national representation which the Lower House cannot attain. In so doing, a bicameral form fosters national unity and consciousness, rather than a representative form merely based on the respective districts of the members of legislature. The scope of legislative responsibility is, therefore, unified with the presence of the Senate. **One of the most**

important features, of course, is that the Senate insures stability of governmental policies as the Senate is a continuing body.[12]

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"MR. RODRIGO: … I would like to state that in the United States Federal Congress, the term of the members of the Lower House is only two years. We have been used to a term of four years here but I think three years is long enough. But they will be allowed to run for reelection any number of times. In this way, we remedy the too frequent elections every two years. **We will have elections every three years under this scheme and we will have a continuing Senate. Every election, 12 of the 24 Senators will be elected, so that 12 Senators will remain in the Senate. We will have a staggered membership in the Senate. In other words, we will have a continuing Senate.**[13]

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"THE PRESIDING OFFICER (Mr. Rodrigo): Commissioner Davide is recognized.

"MR. DAVIDE: This is just a paragraph of that section that will follow what had earlier been approved. It reads: 'OF THE SENATORS ELECTED IN THE ELECTION IN 1992, **THE FIRST TWELVE OBTAINING THE HIGHEST NUMBER OF VOTES SHALL SERVE FOR SIX YEARS AND THE REMAINING TWELVE FOR THREE YEARS.**'

"This is to start the staggering of the Senate to conform with the idea of a continuing Senate.

"THE PRESIDING OFFICER (Mr. Rodrigo): What does the committee say?

"MR. SUAREZ: The committee accepts the Davide proposal, Mr. Presiding Officer.

"THE PRESIDING OFFICER (Mr. Rodrigo): Is there any objection? (*Silence*) The Chair hears none; the proposed amendment is approved.

"MR. SUAREZ: May we submit that to a vote?

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[12] 2 RECORDS OF THE CONSTITUTIONAL COMMISSION, pp. 47-48.

[13] *Id.* at 208.

VOTING

"THE PRESIDING OFFICER (Mr. Rodrigo): As many as are in favor of the Davide amendment, please raise their hand. (*Several Members raised their hand*.)

"As many as are abstaining, please raise their hand. (*No Member raised his hand*.)

"The results show 25 votes in favor and none against; the proposed amendment is approved."[14] (emphasis supplied)

The above deliberations show that the nature of the Senate as a continuing body hinged on the staggering of terms of the Senators, such that the term of one-half or twelve of the Senators ("remaining Senators") would subsist and continue into the succeeding Congress, while the term of the other half or twelve Senators ("outgoing Senators") would expire in the present Congress. As pointed out by **Commissioner Gregorio J. Tingson**, this arrangement whereby half of the Senate's membership continues into the next Congress is designed to help **ensure "stability of governmental policies."**

The structure of the Philippine Senate being evidently patterned after the U.S. Senate,[15] **it reflects the latter's rationale for staggering senatorial terms and constituting the Senate as a continuing body.**[16] Much can be gleaned

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[14] 5 RECORDS OF THE CONSTITUTIONAL COMMISSION, pp. 433-434.

[15] U.S. CONST., Art. 1, §3 provides in relevant part, *viz*:

The Senate of the United States shall be composed of two Senators from each State, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be **divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year**... (emphasis supplied)

[16] KEEFE, W. & OGUL, M., *THE AMERICAN LEGISLATIVE PROCESS* 45 (4th ed. 1977).

from ***The Federalist Papers*** in ascertaining the **rationale** of the Senate's design. ***The Federalist Papers*** was written by three "Founding Fathers" of the United States, namely, James **Madison**, Alexander **Hamilton** and John **Jay**. Madison subsequently became President of the U.S., while John Jay became the first Chief Justice of the U.S. Supreme Court. ***The Federalist Papers*** is a collection of 85 essays that were written and first published in various New York newspapers in 1787-1788 to explain the U.S. Constitution and urge the people of New York to ratify it. As Madison and Hamilton were both members of the Federal Convention of 1787, ***The Federalist Papers*** is largely used as an authority to interpret the intent of the framers of the U.S. Constitution.[17]

James Madison urged that the Senate be so constituted as to have **permanency and stability**.[18] With their **staggered terms** and longer tenure, Senators are expected to bring **stability** and wisdom to legislative measures.[19] Indeed, the framers of the U.S. Constitution considered **stability and consistency of law to be fundamental to liberty itself**.

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[17] THE FEDERALIST (J. Cooke ed., 1961).

[18] Gold, M. & Gupta, D., "The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster," 28 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 205, 243-244 (2004), citing 86 CONG. REC. 117, 151 (1959), citing (statement of Sen. Talmadge) (quoting THE FEDERALIST NO. 39 [James Madison]).

[19] Seitz, V. & Guerra, J., "A Constitutional Defense of 'Entrenched' Senate Rules Governing Debate," JOURNAL OF LAW AND POLITICS, 1, 21 (2004), citing 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 6 "(the **Senate** was to 'check the 1st. branch, to give more wisdom, system, & **stability to the Govt**.'); The Federalist No. 63 (James Madison) (the **Senate** facilitates democracy by providing stability, a measure for gradual change, and a sense of national character); see also Cynthia R. Farina, "The Consent of the Governed: Against Simple Rules for a Complex World," 72 CHICAGO-KENT LAW REVIEW 987, 1016 n. 122 (1997) (**the staggered election of Senators 'increases institutional stability by rendering the Senate an effectively continuous body** in contrast to the House, which must fully reconstitute itself every two years') (citing The Federalist No. 63 [James Madison])." *Id.* (emphasis supplied)

In ***The Federalist Nos. 62 and 63***, the Senate was extensively discussed. Madison elaborated in ***The Federalist No. 62***, the injurious **effects of instability** to a nation. Instability "forfeits the respect and confidence of other nations," and the latter would not want to "connect their fortunes" with that nation. He also explained that the **domestic effects** of mutability are calamitous. "It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow."

Another evil of instability, Madison adds, is the "unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens." An unstable government "damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements." Madison asks, "(w)hat prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy."

Madison then concludes that **above all, the deplorable effect of instability** "is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity,

and disappoints so many of their flattering hopes. **No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability**."

In ***The Federalist No. 63*** written by Madison or Hamilton, it was noted that the "objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a **succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years**. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents." Madison or Hamilton then suggests that "(t)he proper remedy for this defect must be **an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects**."

Alexander Hamilton also stated in the debate during the New York ratification convention that "the main design of the Convention, in creating the Senate, was to **prevent fluctuations**

and cabals."[20] Madison agreed with Hamilton's assessment, writing: "Nothing is more certain than that the **tenure of the Senate was meant as an obstacle to the instability, which not only history, but the experience of our country, had shown to be the besetting infirmity of popular governments**."[21] "In order to form some balance, the departments of government were separated, and as a necessary check, the legislative body was composed of *two branches*. **Steadiness and wisdom are better insured when there is a second branch, to balance and check the first.** The stability of the laws will be greater when the popular branch, which might be influenced by local views, or the violence of a party, is **checked by another, whose longer continuance in office will render them more experienced, more temperate, and more competent to decide rightly**."[22]

John Jay's explanation was along the same lines as the thoughts of Madison and Hamilton, that the **Senate elections were staggered**, so that "uniformity and order, as well as a **constant succession of official information will be preserved**."[23]

In the **deliberations on the U.S. Constitution by the Federal Convention of 1787**, one of the considerations stated for a proposed staggering of nine-year senatorial terms in three divisions was to give other countries "confidence in the stability

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[20] Seitz, V. & Guerra, J., "A Constitutional Defense of 'Entrenched' Senate Rules Governing Debate," JOURNAL OF LAW AND POLITICS, 1, 21 (2004), citing 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 337 (M. Farrand ed., rev. ed. 1966).

[21] *Id.,* citing 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 538.

[22] *Id.*, citing 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 340 (citing Mr. Davie's debate in the North Carolina ratification convention).

[23] Gold, M. & Gupta, D., "The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster," 28 HARVARD JOURNAL OF LAW AND PUBLIC POLICY, 205, 244 (2004), citing 86 CONG. REC. 117, 152 (1959) (statement of Sen. Talmadge) (quoting THE FEDERALIST No. 64 [John Jay]).

or efficacy"[24] of the American government, the lack of which has prevented Great Britain from entering into a commercial treaty with the U.S.[25] "Permanency and safety to those who are to be governed"[26] were also cited as goals for creating the Senate.

In ***McGrain v. Daugherty***,[27] the **U.S. Supreme Court confirmed the view** that the Senate is a "continuing body whose members are elected for a term of six years and so divided into classes that the seats of one-third only become vacant at the end of each Congress, two-thirds always continuing into the next Congress, save as vacancies may occur through death or resignation."[28] In that case, the investigation by a Senate committee was ordered during the Sixty-eighth Congress, which expired on March 4, 1925. The Senate, however, amended the resolution authorizing the investigation to allow the committee to sit at such times and places as it might deem advisable or necessary. **In addressing the question of whether the investigation may be continued after the expiration of the Sixty-eighth Congress**, the U.S. High Court, citing Mr. Hinds in his collection of precedents, **held** that the **Senate as a continuing body**, may give authority to its committees to continue through the recess following the expiration of a Congress. The Court ruled that a Senate committee established in the Sixty-eighth Congress could be "continued or revived" by motion after such expiration and, if continued or revived, would have all its original powers.[29]

The Philippine Supreme Court cited **McGrain** in ***Arnault v. Nazareno***.[30] The **issue** in **Arnault**, however, was the validity

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[24] 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 426 (M. Farrand ed.).

[25] *Id.*

[26] *Id.* at 431.

[27] 273 U.S. 135 (1927).

[28] *Id.* at 181.

[29] *Id.*

[30] 87 Phil. 29 (1950).

of the exercise of the contempt power of the Senate **after the expiration of the first regular session (of the Second Congress)** in which the Senate resolved that petitioner Jean Arnault be arraigned for contempt, **and not after the termination of the Second Congress**. Nonetheless, **in upholding the continuing contempt power of the Senate**, the Court held, *viz*:

"Like the Senate of the United States, **the Senate of the Philippines is a continuing body** whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, two-thirds always continuing into the next Congress save as vacancies may occur thru death or resignation. Members of the House of Representatives are all elected for a term of four years; so that the term of every Congress is four years. The Second Congress of the Philippines was constituted on December 30, 1949, and will expire on December 30, 1953. **The resolution of the Senate committing the Petitioner was adopted during the first session of the Second Congress, which began on the fourth Monday of January and ended on May 18, 1950.**

"… We find no sound reason to limit the power of the legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body. The very reason for the exercise of the power to punish for contempt is to enable the legislative body to perform its constitutional function without impediment or obstruction. **Legislative functions may be and in practice are performed during recess by duly constituted committees charged with the duty of performing investigations or conducting hearing relative to any proposed legislation.** To deny to such committees the power of inquiry with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an essential and appropriate auxiliary to its legislative function. It is but logical to say that the power of self-preservation is coexistent with the life to be preserved.

"**But the resolution of commitment here in question was adopted by the Senate, which is a continuing body and which does not cease to exist upon the periodical dissolution of the Congress or of the House of Representatives. There is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted as in the present case.**

"Mere reflection upon the situation at hand convinces us of the soundness of this proposition. The Senate has ordered an investigation of the Buenavista and Tambobong estates deal, which we have found it is within its competence to make. That investigation has not been completed because of the refusal of the petitioner as a witness to answer certain questions pertinent to the subject of the inquiry. **The Senate has empowered the committee to continue the investigation during the recess. By refusing to answer the questions, the witness has obstructed the performance by the Senate of its legislative function, and the Senate has the power to remove the obstruction by compelling the witness to answer the questions thru restraint of his liberty until he shall have answered them. That power subsists as long as the Senate, which is a continuing body, persists in performing the particular legislative function involved. To hold that it may punish the witness for contempt only during the session in which investigation was begun, would be to recognize the right of the Senate to perform its function but at the same time to deny to it an essential and appropriate means for its performance. Aside from this, if we should hold that the power to punish for contempt terminates upon the adjournment of the session, the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed — an absurd, unnecessary, and vexatious procedure, which should be avoided."**[31]

The Resolution of the majority, the petitioner and the OSG **make much of the fact**, however, that two-thirds of the membership of the Senate continued into the next Congress under the 1935 Constitution when **Arnault** was decided, and only half of the Senate membership now continues into the next Congress under the 1987 Constitution. They contend that since both the 1935 and the 1987 Constitutions provide that a "majority of each House shall constitute a quorum to do business,"[32] the Senate under the 1987 Constitution has lost its

[31] *Id.* at 61-63.

[32] 1935 PHIL. CONST., Art. VI, §10(2) and 1987 PHIL. CONST., Art. VI, §16(2) provide, *viz*:

> … A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide.

continuing nature, as it no longer has a continuing quorum to do business when half of its membership's term expires at the end of every Congress.[33] **Even following their contention**

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[33] The **Dissenting and Concurring Opinion of Justice Carpio**, cited by the Resolution and the Comments of the petitioner and the OSG, contended that the Senate under the 1987 Constitution had lost its continuing nature because less than a quorum or majority continue into the subsequent Congress. This contention cites, as support, *Attorney General Ex. Rel. Werts v. Rogers, et al.*, 56 N.J.L. 480, 652 (1844), and quotes the relevant portions of said case as "the Supreme Court of New Jersey declared." **With due respect**, the following portions of the **Werts case** quoted by the Dissenting and Concurring Opinion of Justice Carpio were statements made **not by the Supreme Court of New Jersey, but by Justice Abbett in his Dissenting Opinion in that case, *viz*:** "(T)he vitality of the body depends upon the existence of a quorum capable of doing business. That quorum constitutes a senate. Its action is the expression of the will of the senate, and no authority can be found which states any other conclusion. All difficulty and confusion in constitutional construction is avoided by applying the rule x x x that the continuity of the body depends upon the fact that in the senate a majority constitutes a quorum, and, as there is always more than a quorum of qualified senators holding seats in that body, its organic existence is necessarily continuous. x x x The senate of the United States remains a continuous body because two-thirds of its members are always, in contemplation of the constitution, in existence."

As stated in the Dissent of Justice Abbett, the New Jersey Senate is composed of 21 senators, divided as equally as possible into three classes. Their term of office was three years. The seats of the senators of the first class were vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that, following the New Jersey constitution, one class may be elected every year.

At the November 1893 election, eight senators were elected to replace the senators whose terms of office would expire on January 8, 1894. On January 9, 1894, the day designated for commencing the annual session of the legislature, there were thirteen "remaining senators," and eight senators-elect. Nine of the "remaining senators" met in the senate chamber and elected one of them as their presiding officer, and thereafter claimed to have elected him president of the senate on the assertion that the four other "remaining senators" were actually or constructively present at the time of his election.

In addressing the issue of whether the president of the senate was validly elected, Justice Abbett contended that he was not. With a 21-member senate of New Jersey, the quorum was eleven and there were only nine of

that the satisfaction of the quorum to do business is based on the number of "remaining Senators," a textual reading of the provisions on legislative functions under the 1935 Constitution would show that even the continuing two-thirds membership of the Senate (or sixteen Senators) cannot perform all the legislative functions of the Senate. A three-fourths (or eighteen Senators) vote is necessary to override the veto of the President with respect to "appropriation bills which appropriate a sum in excess of ten per centum of the total amount voted in the appropriation bill for the general expenses of the Government for the preceding year, or if it should refer to a bill authorizing an increase of the public debt."[34]

More importantly, the reasoning of the Resolution of the majority, the petitioner and the OSG — that the continuing nature

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the "remaining senators" who met on January 9, 1894, two senators short of a quorum. He opined that for purposes of satisfying the quorum requirement, only the thirteen "remaining senators," and not the newly elected senators, could be counted as the "senate is a continuous body… consisting of the thirteen senators composing the two classes whose terms of office had not then expired."

This was the context of the above quote from the Dissent of Justice Abbett in the Dissenting and Concurring Opinion of Justice Carpio. Clearly, **this finds no application in the Philippines where both the "remaining senators" and newly elected senators present are counted for purposes of satisfying the majority quorum requirement as will be subsequently shown.**

[34] 1935 PHIL. CONST., Art. VI, §20(2) provides, *viz*:

(2) The President shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. When a provision of an appropriation bill affects one or more items of the same, the President cannot veto the provision without at the same time, vetoing the particular item or items to which it relates. The item or items objected to shall not take effect except in the manner heretofore provided as to bills returned to the Congress without the approval of the President. If the veto refers to a bill or any item of an appropriation bill which appropriates a sum in excess of ten per centum of the total amount voted in the appropriation bill for the general expenses of the Government for the preceding year, or if it should refer to a bill authorizing an increase of the public debt, the same shall not become a law unless approved by **three-fourths of all the Members of each House**. (emphasis supplied)

of the Senate depends on the presence of a **quorum,** counting the number of **"remaining Senators" — falls under its own weight when we take a hard look at the Constitutional provision on the term of Senators.**

Article VI, Section 4 of the 1987 Constitution, provides that, "(t)he term of office of the Senators shall be **six years** and shall commence, unless otherwise provided by law, at **noon on the thirtieth day of June next following their election**." (emphasis supplied) Pursuant to this provision, the term of office of a Senator expires before noon on the thirtieth day of June, six years from commencement of his term. Thus, upon expiration of the term of the twelve "outgoing Senators" on June 30, the term of the twelve "new Senators" will commence.[35] The Senators-elect take their oath of office upon commencement of their term and begin to exercise their functions;[36] the collective oath-taking of the Senators upon the opening of Congress is normally but a tradition and a formality.[37] In the Fourteenth

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[35] *Defensor-Santiago v. Ramos*, 323 Phil. 665 (1996).

[36] 1 JOURNAL OF THE PHIL. SENATE, 14th Congress, 1st Reg. Sess., July 23 & 24, 2007.

[37] 1 RECORDS OF THE SENATE, 11th Congress, 1st Reg. Sess., July 27, 1998, pp. 3-4. The following exchanges in the Senate upon opening of the 11th Congress are relevant, *viz*:

"Senator Tatad. Mr. President, Article VI, Section 4 of the Constitution, as just read by the Secretary, provides that 'The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.'

I am not aware of any law that has modified this, and to the best of my knowledge, all the 12 new Senators entered into the performance of their duties on the 30th day of June this year. This means that they all have already taken their oath of office.

To require them to take their oaths of office anew, 27 days after they have done so, might not only be a superfluity, it might also be interpreted by the public as trifling with the office of the senator.

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The Presiding Officer (Sen. J. Osmeña). The Acting Majority Leader will please respond.

Senator Drilon. There is no question, Mr. President, that indeed, the terms of office of the new Senators took effect in accordance with the Constitution.

Congress, for example, newly elected Senator Loren B. Legarda filed Senate Bill No. 225, entitled "An Act Providing for the Establishment of *Barangay* Drugstores, Otherwise Known as 'Botica Sa *Barangay*' and for other Purposes," on June 30, 2007, the day her term commenced and before the opening of the Fourteenth Congress on July 23, 2007. Likewise, on the same day, newly re-elected Senator Francis N. Pangilinan filed Senate Bill No. 138, entitled "An Act Providing for a Magna Carta for Students."

Contrary to the contention of the Resolution of the majority, petitioner and the OSG, **at no point from one Congress to the next is there a lack of quorum based on the terms of office of the "remaining Senators" and "new Senators."** Under the 1987 Constitution, on the opening of a Congress on the fourth Monday of July,[38] the quorum is based on the number of both the "remaining Senators" and the "new Senators" whose terms have already commenced on June 30. A similar situation obtained under the 1935 Constitution, in which three sets of eight Senators had staggered six-year terms. Article VI, Section 3 of the 1935 Constitution provides: "The term of office of Senators shall be six years and shall begin on the thirtieth day of December next following their election."

Thus, the Senate under both the 1935[39] and the 1987[40] Constitutions counted the quorum based on

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If they are going to take their oaths now, it is a matter of tradition and formality, and should not in any way affect their respective terms of office."

[38] 1987 PHIL. CONST., Art. VI, §15 provides, *viz*:

Section 15. The Congress shall convene once every year on the fourth Monday of July for its regular session, unless a different date is fixed by law, and shall continue to be in session for such number of days as it may determine until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays. The President may call a special session at any time.

[39] 1 RECORDS OF THE SENATE, 4th Cong., 1st Reg. Sess., January 27, 1958, pp. 1-2; 1 RECORDS OF THE SENATE, 3rd Cong., 1st Reg. Sess., January 25, 1954, pp. 1-2.

[40] 1 RECORDS OF THE SENATE, 14th Cong., 1st Reg. Sess., July 23, 2007, p. 3; 1 RECORDS OF THE SENATE, 13th Cong., 1st Reg. Sess.,

the number of "remaining Senators" and "new Senators" upon opening of every Congress. This **unbroken practice** of the Senate of counting the quorum at the start of every new Congress based on both the "remaining Senators" and "new Senators," and not only on the two-thirds or one-half "remaining Senators," is **not something to be lightly cast aside** in ascertaining the nature of the Senate as a continuing body.[41] In the U.S., the Senate of the 18th century[42] and the present day upper chamber[43] have also counted their quorum based on the number of both the "remaining Senators" and "new Senators" upon the opening of every Congress.

It is worth noting that in the June 25 and 26, 1787 debates of the Federal Convention of 1787 on the staggering of terms of office of Senate members — whether the term under consideration was nine years or six years with triennial staggering **— the quorum requirement was not mentioned as a consideration to maintain continuity in the Senate.**[44] Conversely, neither was the staggering of terms considered when the quorum requirement was taken up by the Convention two months later on August 10, 1787.[45] When the

July 26, 2004, p. 6; 1 RECORDS OF THE SENATE, 12th Cong., 1st Reg. Sess., July 23, 2001 p. 3; 1 RECORDS OF THE SENATE, 11th Cong., 1st Reg. Sess., July 27, 1998, pp. 4-5; 1 RECORDS OF THE SENATE, 10th Cong., 1st Reg. Sess., July 24, 1995, p. 3; 1 RECORDS OF THE SENATE, 9th Cong., 1st Reg. Sess., July 27, 1992, p. 3.

[41] Mcginnis, J. & Rappaport, M., "The Constitutionality of Legislative Supermajority Requirements: A Defense," 105 YALE LAW JOURNAL 483 (1995), citing *Walz v. Tax Commission*, 397 U.S. 664, 678 (1970).

[42] JOURNAL OF THE U.S. SENATE, 2d Cong., 1st Sess., October 24, 1791, pp. 821-824.

[43] U.S. CONGRESSIONAL RECORD, PROCEEDINGS AND DEBATES OF THE 110th CONGRESS (SENATE), 1st Sess., January 4, 2007, pp. 4-5.

[44] 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 395-435 (M. Farrand ed.).

[45] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 251-253 (M. Farrand ed.); Williams, J., "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," 48 WILLIAM AND MARY LAW REVIEW 1025 (2006).

quorum requirement was being set by the Federal Convention, there were proposals to peg it at the majority or less than the majority of the members of the Senate; or to leave it to the legislature to set the quorum requirement, considering the secession of some States that would not send delegates to the Senate and the inconvenience of not reaching a quorum.[46] There was also a proposal to fix the quorum at two-thirds of the members of the Senate.[47] **In setting the quorum requirement, the balance being struck was between the inconvenience of not being able to muster a quorum if it was set too high and the insufficiency in representation of the interests of the people if it was set too low.**[48] **The continuity of the Senate, considering the staggered terms of its members, was apparently not part of the equation.**

It may be argued that under the 1987 Constitution, some "outgoing Senators" might resign prior to the termination of their terms on June 30 to run for election in May,[49] thus, possibly diminishing the number of Senators to only twelve or less than the quorum requirement. However, the argument also holds true under the 1935 Constitution. It could happen that four of the sixteen "remaining Senators" would resign or die, such that there would be only twelve Senators left, or less than the quorum requirement under the 1935 Constitution. (Even **Arnault** acknowledged this eventuality; hence, as afore-quoted, it ruled that "the Senate of the Philippines is a continuing body whose

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[46] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 251-253 (M. Farrand ed.).

[47] 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 549 (M. Farrand ed.).

[48] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 251-253 (M. Farrand ed.).

[49] Prior to its repeal by Republic Act No. 9006 in 2001, Section 67 of Batas Pambansa Blg. 881 provided, *viz*: "Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy." (*Fariñas v. The Executive Secretary*, 463 Phil. 179 [2003])

members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, two-thirds always continuing into the next Congress **save as vacancies may occur thru death or resignation**.") The point of the illustration is that the nature of the Senate as a continuing body under both the 1935 and the 1987 Constitutions cannot be made to depend on the actual presence of a quorum which, in turn, depends on the **tenure** of the Senators.

In sum, **it is the staggering of the terms of the 24 Senators and allowing the terms of office of a portion of the Senate membership to continue into the succeeding Congress – whether two-thirds under the 1935 Constitution or one-half under the 1987 Constitution – that provides the stability indispensable to an effective government, and makes the Senate a continuing body as intended by the framers of both the 1935 (as amended) and the 1987 Constitutions.**

Part of the stability provided by a continuing Senate is the **existence of rules of proceedings** adopted pursuant to the power granted by the U.S. Constitution,[50] **rules that continue to be in effect from one Congress to the next** until such rules are repealed or amended, but with the process for repeal and amendment also being governed by the subsisting rules. U.S. Senator Francis Warren cautions that **a Senate that is not continuing, but instead new in each Congress, opens all rules to debate as a new matter; the Senate will be totally and wholly without rules as it proceeds "at sea without rudder or compass regarding rules."**[51] Thus, in the U.S., the Senate rules of proceedings provide that "(t)he rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these

[50] U.S. CONST., Art. I, §5 provides, *viz*:

Each House may determine the Rules of its Proceedings…

[51] Gold, M. & Gupta, D., "The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster," 28 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 205, 225 (2004).

rules."[52] These rules, adopted on January 11, 1884 and made effective on January 21, 1884, continue to be in effect to this day[53] alongside the continuing membership of the Senate.[54]

Patterned after the U.S. Constitution, the 1987 Constitution also provides under Article VI, Section 16(3) that "(e)ach House may determine the rules of its proceedings…" **As in the U.S. Senate, the Senate Rules (of proceedings) adopted by the Philippine Senate have a continued effect from one Congress to the next** as shown by the following provisions of the Philippine Senate Rules:

"Rule LII (Date of Taking Effect), Section 137: These Rules shall **take effect on the date of their adoption and shall remain in force** until they are amended or repealed."

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"Rule LI (Amendments to, Or revisions Of, The Rules), Section 136: **At the start of each session in which the Senators elected in the preceding elections shall begin their term of office**, the President may **endorse the Rules to the appropriate committee for amendment or revision**.

"The Rules may also be amended by means of a motion which should be presented at least one day before its consideration, and the vote of the majority of the Senators present in the session shall be required for its approval." (emphasis supplied)

It is obvious that the above rules do not provide for the expiration of the Senate Rules at the termination of every Congress. On the contrary, Rule LI provides that at the opening of every Congress, the Senate President may endorse the Senate Rules to the appropriate committee for amendment or revision, which connotes that the Senate Rules must be

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[52] STANDING RULES OF THE U.S. SENATE, RULE V.

[53] WALKER, H., *THE LEGISLATIVE PROCESS* 195 (1948).

[54] Dunn, C., "Playing by the Rules: The Need for Constitutions to Define the Boundaries of the Legislative Game with a One-Subject Rule," 35 UNIVERSITY OF WEST LOS ANGELES LAW REVIEW 129, 133 (2002-2003).

subsisting for them to be subject to amendment or revision. If the Senate were not a continuing body, the Senate Rules governing its proceedings would not be given continuing effect from one Congress to the next.

The earlier Senate Rules adopted in 1950 under the 1935 Constitution also evince the same intent of the Senate to make its rules continuing, in conformity with its continuous nature as a legislative body. Chapter LII (Amendments to or Revisions of the Rules), Section 121 of the 1950 Rules, provides, *viz*:

"Sec. 121. At the beginning of each session in which the Senators elected in the last or preceding elections shall begin their term of office, and as soon as the Committee on Rules shall have been organized, the President of the Senate shall **endorse the Rules to said Committee for amendment or revision.**

"An amendment to the Rules, may, however, be presented by means of a motion containing the proposed amendment.

"This should be **presented at least one day before its consideration**, and the vote of a majority of the Senators present in the session shall be required for its approval." (emphasis supplied)

While the present Senate Rules provide under Rule XLIV (Unfinished Business), Section 123 that "(a)ll pending matters and proceedings shall terminate upon the expiration of one (1) Congress," **between the expiration of a Congress and the opening of the succeeding Congress, some functions of the Senate continue during such recess.** Aside from the administrative functions performed by Senate employees for the continued operation of the Senate as an institution, **legislative functions continue to be exercised.** The offices of the "remaining Senators" continue their legislative work in preparation for the succeeding Congress. These continuing functions require continuing effectivity of the Senate Rules. An example of a provision of the Senate Rules applicable to these continuing activities is Rule XXII (Filing and Consideration of Bills and Resolutions), Section 61, which provides that "(a)ll bills and resolutions shall be filed with the Office of the Secretary whether the Senate is in session or not."

To illustrate, in the current Fourteenth Congress, Senate Bill No. 1 entitled, "An Act Exempting the Purchase of Medicine by Senior Citizens from the Coverage of the Value Added Tax, and Amending Section 109 (1) of the National Internal Revenue Code, as Amended" was filed by **Senator Jinggoy E. Estrada on June 30, 2007 after the adjournment of the third or final regular session**[55] **of the Thirteenth Congress and before the opening of the Fourteenth Congress**.[56] On the same date, **Senator Rodolfo G. Biazon** filed Senate Bill No. 32 entitled, "An Act Providing for the National Defense and Security of the Republic of the Philippines, and for Other Purposes." Both bills were taken up on first reading and referred to the proper Senate Committees in the Senate session on July 24, 2007, a day after the Fourteenth Congress opened on July 23, 2007, when the Senate was organized with the election of its officers, and President Gloria Macapagal-Arroyo delivered her State of the Nation Address.[57]

It should be noted that the termination of unfinished business upon expiration of one Congress is sanctioned by Rule XLIV, Section 123 of the Senate Rules. The Senate Rules, may, however, be amended under Rule LI, Section 36. It remains to be seen whether by amendment of the Senate Rules, the Senate would allow a Senate Committee conducting an investigation, for example, to continue its proceedings after the expiration of a Congress as in the afore-discussed case, ***McGrain v. Daugherty***.

Prescinding from the continuing nature of the Senate and the continuing effectivity of the Senate Rules (of proceedings),

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[55] 1987 PHIL. CONST., Art. VI, §15 provides, *viz*:

Section 15. The Congress shall convene once every year on the fourth Monday of July for its regular session, unless a different date is fixed by law, and shall continue to be in session for such number of days as it may determine until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays. The President may call a special session at any time.

[56] *Id.*

[57] 1 JOURNAL OF THE PHIL. SENATE, 14th Cong., 1st Reg. Sess., July 23 & 24, 2007.

it is my considered view that the **Rules of Procedure Governing Inquiries adopted by the Senate of the Tenth Congress on August 21, 1995 should likewise be recognized to have continuing force and effect after being "duly published"** in two newspapers of general circulation on August 24, 1995.

Deference to the legislative department in interpreting its rule-making power

The **power of each House of Congress to adopt its own rules of proceedings** under Article VI, Section 16[58] of the 1987 Constitution is **so obvious** that the 1986 Constitutional Commission hardly deliberated on the matter. Even the framers of the U.S. Constitution, from which our own provision on rules of proceedings was adopted, did not prescribe standards for the promulgation of internal procedural rules and spent no time debating this power of each House of Congress; they conferred essentially open-ended discretion on each chamber to regulate its own internal proceedings.[59] In the 1787 Federal Convention, it was not a controversial principle that each chamber should have the ability to adopt rules binding on its members. "The humblest assembly of men is understood to possess this power; and it would be absurd to deprive the councils of the nation of a like authority."[60]

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[58] 1987 PHIL. CONST., Art. VI, §16(3) provides, *viz*:

(3) Each House may determine the rules of its proceedings…

[59] Seitz, V. & Guerra, J., "A Constitutional Defense of 'Entrenched' Senate Rules Governing Debate," JOURNAL OF LAW AND POLITICS 1, 19 (2004), citing Miller, M., Comment, "The Justiciability of Legislative Rules and the 'Political' Political Question Doctrine," 78 CALIFORNIA LAW REVIEW 1341, 1358 (1990) (explaining that the Rules of Proceedings Clause did not appear in any of the draft Constitutions presented in Philadelphia and made its first appearance only in the Committee of Detail, where it apparently was adopted without discussion); Dunn, C., "Playing by the Rules: The Need for Constitutions to Define the Boundaries of the Legislative Game with a One-Subject Rule," 35 UNIVERSITY OF WEST LOS ANGELES LAW REVIEW 129 (2002-2003), citing 1-5 FARRAND, M., THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (1998); and R. Luce, LEGISLATIVE PROBLEMS 185 (1935).

[60] Williams, J., "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," 48

It cannot be gainsaid that rules of proceedings are a necessity in preserving order, decency and regularity in a dignified public body. These rules are weapons of the weaker party to defend themselves from irregularities and abuses "which the wantonness of power is but too often apt to suggest to large and successful majorities."[61] Thomas Jefferson stated in the opening of his widely used, *A Manual of Parliamentary Practice*, *viz*:

"Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, 'It was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of the administration and those who acted with the majority of the House of Commons, than in neglect of, or departure from, the **rules of proceeding**; **that these forms, as instituted by our ancestors, operated as a check, and control, on the actions of the majority; and that they were, in many instances, a shelter and protection to the minority, against the attempts of power**.'"[62] (emphasis supplied)

Still and all, the rule-making power of the legislature is not absolute. The outer limit of a legislative rule is reached when it collides with a constitutional proscription. The case in which the U.S. Supreme Court made its most extensive analysis of the nature and limitations of the congressional rule-making power was ***United States v. Ballin,***[63] a late nineteenth-century case that involved the constitutional quorum requirement.[64]

WILLIAM AND MARY LAW REVIEW 1025, 1068 (2006), citing 3 STORY, J., *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES*, 298 (1987 ed.) (1833).

[61] Dunn, C., "Playing by the Rules: The Need for Constitutions to Define the Boundaries of the Legislative Game with a One-Subject Rule," 35 UNIVERSITY OF WEST LOS ANGELES LAW REVIEW 129 (2002-2003).

[62] *Id.*, citing JEFFERSON, T., *A MANUAL OF PARLIAMENTARY PRACTICE* 13 (1873).

[63] 144 U.S. 1 (1892); Taylor, P., "Proposals to Prevent Discontinuity in Government and Preserve the Right to Elected Representation," 54 SYRACUSE LAW REVIEW 435 (2004).

[64] Williams, J., "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," 48 WILLIAM AND MARY LAW REVIEW 1025, 1069 (2006).

The origin of **Ballin** was a quorum-busting technique used by both the Republicans and the Democrats in that era to halt business in the House of Representatives. Under the rules of the House at that time, the Speaker established the presence of a quorum by counting the voting members. In the 1888 elections, the Republicans won the majority for the first time in fourteen years. The new Speaker of the Fifty-first Congress, Thomas B. Reed of Maine, found himself in the position of having 166 Republican members, the exact number needed to meet the quorum requirement.[65] Democrats could thus stop business in the House by merely refusing to vote and requiring the Republicans to establish a quorum with their members alone. On January 29, 1890, Democrats halted business on a contested election case by remaining silent to defeat the quorum requirement.[66] Speaker Reed retaliated by announcing the names of members "present and refusing to vote," thereby establishing that a majority of the House was present and the House was thereby able to conduct business.[67] Speaker Reed's famous interpretation of the quorum rule became "Rule XV"[68] in the Fifty-first Congress, the constitutionality of which became the central issue in **Ballin**.[69]

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[65] *Id.* at 1069-1070, citing Cannon, J., "Dramatic Scenes in My Career in Congress. II - When Reed Counted a Quorum," 140 HARPER'S MAGAZINE 433, 434 (1920).

[66] *Id.*

[67] Williams, J., "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," 48 WILLIAM AND MARY LAW REVIEW 1025, 1070 (2006), citing 21 CONG. REC. 949-51 (1890).

[68] Rule XV provides, *viz*: "... (3) On the demand of any member, or at the suggestion of the speaker, the names of members sufficient to make a quorum in the hall of the house who do not vote shall be noted by the clerk and recorded in the journal, and reported to the speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business." HOUSE JOURNAL 230, Feb. 14, 1890, cited in *United States v. Ballin*, 144 U.S. 1, 5 (1892).

[69] Williams, J., "How to Survive a Terrorist Attack: The Constitution's Majority Quorum Requirement and the Continuity of Congress," 48 WILLIAM AND MARY LAW REVIEW 1025, 1070 (2006).

Ballin involved a tariff law passed by the House in 1890 under Speaker Reed's new quorum-counting rule.[70] The plaintiff was a New York merchant who had imported worsted wool fabrics subject to that law. The enactment passed the House by a vote of 138 to none, with the Speaker noting, in accordance with the new Rule XV, that 74 members were in the chamber but not voting, bringing the total number of lawmakers present to 212 — a figure well above the 166 members needed to make a quorum.[71] The merchant challenged the legality of the tariff, arguing that the law had not legitimately passed the House, because a quorum had not been present to do business.[72]

In ruling that the tariff law validly passed the House, the **Ballin Court** upheld the action of the Speaker, *viz*:

"The action taken was in direct compliance with this rule. [Rule 15 provides, *viz*: '... (3) On the demand of any member, or at the suggestion of the speaker, the names of members sufficient to make a quorum in the hall of the house who do not vote shall be noted by the clerk and recorded in the journal, and reported to the speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business.' H. J. 230, Feb. 14, 1890.] The question, therefore, is as to the validity of this rule, and not what methods the speaker may of his own motion resort to for determining the presence of a quorum, nor what matters the speaker or clerk may of their own volition place upon the journal. **Neither do the advantages or disadvantages, the wisdom or folly, of such a rule present any matters for judicial consideration. With the courts the question is only one of power. The constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity**

[70] *United States v. Ballin*, 144 U.S. 1 (1892).

[71] *Id.* at 3-4.

[72] *Id.* at 3.

of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, **within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.**

"The constitution provides that 'a majority of each [house] shall constitute a quorum to do business.' In other words, when a majority are present, the house is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the constitution requires is the presence of a majority, and when that majority are present, the power of the house arises.

"But how shall the presence of a majority be determined? The **constitution has prescribed no method of making this determination,** and it is therefore **within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact.** It may prescribe answer to roll-call as the only method of determination; or require the passage of members between tellers, and their count, as the sole test; or the count of the speaker or the clerk, and an announcement from the desk of the names of those who are present. Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact; and **as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any**, it follows that the house may adopt either or all, or it may provide for a combination of any two of the methods. That was done by the rule in question, and all that that rule attempts to do is to prescribe a method for ascertaining the presence of a majority, and thus establishing the fact that the house is in a condition to transact business."[73] (emphasis supplied)

In ***Defensor-Santiago v. Guingona, Jr.,***[74] which involved an interpretation of the rules of the Senate but not private rights, the Court emphasized the respect due a co-equal branch of government in the determination of its internal affairs, *viz*:

"*On grounds of respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the*

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

[74] 359 Phil. 276 (1998).

legislature; it is not within the province of courts to direct Congress how to do its work.

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"…Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents this Court from prying into the internal workings of the Senate. To repeat, this Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and majesty of the law."[75] (footnote omitted, ital. in original)

Following the principles of **Ballin** and **Santiago**, I submit that the Court ought to take a deferential stance in interpreting the rule-making power of the Senate as a co-equal branch of government, so long as rights of private parties are not infringed.[76] The Rules of Procedure Governing Inquiries is akin to the Senate Rules (of proceeding) in that the former governs the internal workings of the Senate and its committees, although admittedly different in some respects from the Senate Rules because it affects rights of parties not members of the Senate and, hence, requires publication. To the extent that the Rules of Procedure Governing Inquiries does not transgress the requirement of due process as its outer limit, the Senate should be given room to interpret the duration of its effectivity from one Congress to the next.

Similar to **Ballin**, there is **no standard set by Article VI, Section 21 of the 1987 Constitution, as to the manner and frequency of publication of the Rules of Procedure Governing Inquiries.** It is within the **competency of the Senate to prescribe a method** that shall **reasonably conform to the due-process purpose of publication, and the Senate has validly provided the method of one-time publication of its Rules of Procedure Governing Inquiries in two**

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[75] *Id.* at 300-301.

[76] Dunn, C., "Playing by the Rules: The Need for Constitutions to Define the Boundaries of the Legislative Game with a One-Subject Rule," 35 UNIVERSITY OF WEST LOS ANGELES LAW REVIEW 129, 140 (2002-2003), citing *Jagt v. O'Neill*, 699 F.2d 1166, 1172 (D.C. 1983).

newspapers of general circulation, in line with the ruling in Tañada.

The **unbroken practice of the Senate** of not adopting Rules of Procedure Governing Inquiries and publishing the same in every Congress, owing to its nature as a continuing body, **is not something to be lightly brushed aside,**[77] **especially considering the grave consequences of cutting this continuity.** Holding itself to be a continuing body, the Senate has dispensed with the adoption not only of Rules of Procedure Governing Inquiries, but also of Senate rules (of proceedings) at the start of every Congress in the last ten years.[78] As a consequence of the absence of rules if the Senate is held to be not a continuing body, its acts during these Congresses may be put into question. A mathematical calculation of a quorum in view of the staggered terms of the Senate membership cannot simply subvert the deeply-entrenched thought-out rationale for the design of a continuing and stable Senate, shown to be necessary in promoting effective government and protecting liberties.

Where rights are not violated, the Court ought not like lightning strike down a valid rule and practice of a co-equal branch of government, lest the walls delineating powers be burned.

I vote to grant the Motion for Reconsideration.

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[77] Mcginnis, J. & Rappaport, M., "The Constitutionality of Legislative Supermajority Requirements: A Defense," 105 YALE LAW JOURNAL 483 (1995), citing *Walz v. Tax Commission*, 397 U.S. 664, 678 (1970).

[78] 1 RECORDS OF THE SENATE, 14th Cong., 1st Reg. Sess., July 23, 2007; 1 RECORDS OF THE SENATE, 13th Cong., 1st Reg. Sess., July 26, 2004; 1 RECORDS OF THE SENATE, 12th Cong., 1st Reg. Sess., July 23, 2001; 1 RECORDS OF THE SENATE, 11th Cong., 1st Reg. Sess., July 27, 1998.

SEPARATE DISSENTING OPINION

AZCUNA, *J.*:

I fully join Chief Justice Reynato S. Puno in his dissenting opinion.

It was the intent of the Constitutional Commission to preserve the nature of the Senate as a continuing body to provide an institutional memory in the legislature. The deliberations in the Commission, cited by the Chief Justice, clearly bear this out. The Senate, therefore, need not re-publish its Rules with every new Congress.

Furthermore, as I opined in my dissent in the *JPEPA case*,[1] specific provisions of the present Constitution conferred on Congress an information function, apart from its legislative function, which it may exercise to enable our people to effectively take part in governance. The Senate investigation at issue is, therefore, in order even apart from the power to legislate.

I, therefore, **VOTE** to **GRANT** the Senate's Motion for Reconsideration and **DISMISS** the petition for lack of merit.

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[1] G.R. No. 170516, *Akbayan Ctizens Action Party ["AKBAYAN"], Pambansang Katipunan Ng Mga Samahan sa Kanayunan ["PKSK"], et al. v. Thomas G. Aquino, in his capacity as Undersecretary of the Department of Trade and Industry [DTI] and Chairman and Chief Delegate of the Philippine Coordinating Committee [PCC]* for the *Japan-Philippines Economic Partnership Agreement, et al.*, promulgated July 17, 2008.

THIRD DIVISION

[G.R. No. 155703. September 8, 2008]

THE REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DOMINADOR SANTUA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; REPUBLIC ACT NO. 26, SECTION 3; ENUMERATES THE DOCUMENTS REGARDED AS VALID AND SUFFICIENT BASES FOR RECONSTITUTION OF A TRANSFER CERTIFICATE OF TITLE. — The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. It partakes of a land registration proceeding. Thus, it must be granted only upon clear proof that the title sought to be restored was indeed issued to the petitioner. In this regard, Section 3 of Republic Act (R.A.) No. 26 enumerates the documents regarded as valid and sufficient bases for reconstitution of a transfer certificate of title: "SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property the description of which is given in said documents, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) *Any other document* which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title."

2. ID.; ID.; ID.; THE PHRASE "ANY DOCUMENT" MENTIONED THEREIN, HOW INTERPRETED. — The Court has already settled in a number of cases that, following the principle of *ejusdem generis* in statutory construction, "any document" mentioned in Section 3 [RA No. 26] should be interpreted to refer to documents similar to those previously enumerated therein. As aptly observed by the petitioner, the documents enumerated in Section 3(a), (b), (c), (d) and (e) are documents that had been issued or are on file with the Register of Deeds, thus, highly credible. Moreover, they are documents from which the particulars of the certificate of title or the circumstances which brought about its issuance could readily be ascertained. After all, the purpose of reconstitution proceedings under R.A. No. 26 is the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. Consequently, a petitioner's documentary evidence should be able to establish that the lost or destroyed certificate of title has, in fact, been issued to the petitioner or his predecessor-in-interest and such title was in force at the time it was lost or destroyed.

3. ID.; ID.; TAX DECLARATION, SURVEY PLAN AND TECHNICAL DESCRIPTIONS; DO NOT SERVE AS VALID BASES FOR RECONSTITUTION; EXPLAINED.— The tax declaration obviously does not serve as a valid basis for reconstitution. For one, we cannot safely rely on Tax Declaration No. 15003-816 as evidence of the subject property being covered by TCT No. T-22868 in the name of respondent because a tax declaration is executed for taxation purposes only and is actually prepared by the alleged owner himself. In fact, in *Heirs of Eulalio Ragua v. Court of Appeals*, the Court pronounced that a tax declaration is not a reliable source for the reconstitution of a certificate of title. At most, the tax declaration can only be *prima facie* evidence of possession or a claim of ownership, which however is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of the land covered by the lost or destroyed title but merely determines whether a re-issuance of such title is proper. As for the survey plan and technical descriptions, the Court has previously dismissed the same as not the documents referred to in Section 3(f) but merely additional documents that should accompany the petition for reconstitution as required under Section 12 of R.A. 26 and Land

Registration Commission Circular No. 35. Moreover, a survey plan or technical description prepared at the instance of a party cannot be considered in his favor, the same being self-serving. Further, in *Lee v. Republic*, the Court declared the reconstitution based on a survey plan and technical descriptions void for lack of factual support.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Abas Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Should the courts grant a petition for reconstitution of a certificate of title on the basis of a tax declaration, survey plan and technical description? This is the question that confronts the Court in this petition for review of the Court of Appeals (CA) Decision[1] dated September 23, 2002.

The facts of the case are undisputed:

On February, 16, 1999, respondent Dominador Santua filed with the Regional Trial Court (RTC) of Calapan, Oriental Mindoro, a petition for judicial reconstitution of Transfer Certificate of Title (TCT) No. T-22868. Respondent alleged that he is the registered owner of certain parcels of land with an area of 3,306 square meters, situated in Poblacion, Victoria, Oriental Mindoro, and covered by TCT No. T-22868; the original copy of TCT No. T-22868 was among those destroyed by the fire that completely razed the Capitol Building then housing the Office of the Register of Deeds of Oriental Mindoro on August 12, 1977; the owner's duplicate copy was lost while in respondent's possession and all efforts exerted to locate the same proved futile; there are no co-owner's, mortgagee's, or

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Regalado E. Maambong, concurring; *rollo*, pp. 51-60.

lessee's duplicate of said certificate of title; there are no buildings or improvements existing on said land which do not belong to respondent; respondent and his family are in actual possession of the property and have been paying taxes thereon; and there exists no deeds or instrument affecting the property which have been presented for and pending registration in the Office of the Register of Deeds. The names and addresses of the adjoining property owners were enumerated in the petition. Attached to the petition were a tax declaration, survey plan, and technical description of each lot.[2]

On February 25, 1999, the RTC issued an Order[3] setting the initial hearing of the case. It also directed the publication of the order in the Official Gazette, its posting at the main entrance of the Capitol Building and in the Municipal Building of Victoria, Calapan City, and sending of copies thereof to all adjoining owners mentioned in the petition, the Register of Deeds, Provincial Prosecutor, Director of Lands, Solicitor General and the Administrator of the Land Registration Authority.

Respondent complied with the jurisdictional requirements. The court thus commissioned the Clerk of Court to receive the respondent's evidence and submit his findings to the court. Aside from the documents that delved into the jurisdictional aspect of the petition, respondent offered the following documents in support of his petition:

Exh. "C" - Tax Declaration No. 15003-816 indicating the name of Dominador Santua as owner of the lots covered by TCT No. 22868;

Exh. "D" - Technical description of Lot 5358-A-3-0-8-B, (LRC) PSD-257136;

Exh. "E" - Technical description of Lot 5358-A-3-0-8-C, (LRC) PSD-257136;

Exh. "F" - Technical description of Lot 5358-A-3-0-8-D, (LRC) PSD-257136;

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[2] *Rollo*, pp. 61-62.

[3] *Id.* at 73.

Exh. "G" - Technical description of Lot 5358-A-3-0-8-E, (LRC) PSD-257136;

Exh. "H" - Technical description of Lot 5358-A-3-0-8-F, (LRC) PSD-257136;

Exh. "I" - Blue print plan of Lot 5358-A-3-0-8, (LRC) PSD-251540 as surveyed for Dominador Santua, *et al.*

Exh. "J" - Certification dated September 24, 1982 issued by the Acting Register of Deeds of this province, certifying to the effect that all original certificates of title on file with the Registry were destroyed by reason of the fire that hit the Capitol Building housing the Office of the Register of Deeds on August 12, 1977.

Respondent testified that he is the registered owner of certain parcels of land known as Lot No. 5358-A-3-0-8-B, with an area of 730 square meters; Lot No. 5358-A-3-0-8-C, with an area of 731 square meters; Lot No. 5358-A-3-0-8-D, with an area of 731 square meters; Lot No. 5358-A-3-0-8-E, with an area of 731 square meters, and Lot No. 5358-A-3-0-8-F, with an area of 383 square meters, or a total area of 3,306 square meters, situated in Poblacion, Victoria, Mindoro. The original copy of this title was among the documents destroyed on August 12, 1977 when fire razed the entire Capitol Building then housing the Office of the Register of Deeds, while the owner's duplicate copy in the respondent's possession was lost when their house was destroyed by the Intensity 7 earthquake that hit the province on November 15, 1994. There is no co-owner's, mortgagee's or lessee's duplicate copy of said title previously issued by the Register of Deeds. There exist no deeds of instruments affecting the property, which have been presented to, or pending registration with, the Office of the Register of Deeds. It has never been offered as a bail bond or as collateral to secure a loan with any banking institution or any person. It has not been declared as null and void by any court or competent authority. It is not a subject of attachment.

The Provincial Assessor, Mr. Onisimo Naling, testified that the tax declaration submitted in evidence is a true and genuine tax declaration issued by their office. Mrs. Flordeliza Villao,

Records Officer III of the Register of Deeds, testified that the Certification issued by her office is a true and genuine certification.

The adjoining property owners were notified of the hearing of the petition but no one interposed any objection thereto.

On December 15, 2000, the RTC granted the petition, thus:

> ACCORDINGLY, finding the instant petition to be well-taken and there being no opposition thereto, same is hereby granted. The Register of Deeds of this province is hereby directed to reconstitute the original and the owner's duplicate copies of Transfer Certificate of Title No. T-22868 in the name of "DOMINADOR SANTUA, married to Natividad Paner, of legal age, Filipino citizen and a resident of Poblacion, Victoria, Oriental Mindoro" on the basis of the tax declaration, technical descriptions and plan of Lot No. 5358-A-3-0-8-B, Lot No. 5358-A-3-0-8-C, Lot No. 5358-A-3-0-8-D, Lot No. 5358-A-3-0-8-E, and Lot No. 5358-A-3-0-8-F, (LRC) Psd 257136, thirty (30) days after receipt of this Order by the Register of Deeds of this province and the Land Registration Authority.
>
> SO ORDERED.[4]

On January 16, 2001, the Office of the Solicitor General filed a Notice of Appeal, which was given due course by the RTC.

On September 23, 2002, the CA affirmed the RTC Decision.[5] Petitioner filed this petition for review raising the sole issue —

> WHETHER OR NOT TAX DECLARATIONS, TECHNICAL DESCRIPTION AND LOT PLANS ARE SUFFICIENT BASES FOR THE RECONSTITUTION OF LOST OR DESTROYED CERTIFICATES OF TITLE[6]

In a Comment/Manifestation[7] dated September 11, 2003, respondent's counsel manifested that respondent is submitting

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[4] *Id.* at 100.

[5] *Id.* at 51-60.

[6] *Id.* at 38.

[7] *Id.* at 138-139.

the petition for review for resolution without any comment from him.

Respondent's waiver of the filing of a comment is unfortunate considering that we find the petition meritorious.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land.[8] It partakes of a land registration proceeding.[9] Thus, it must be granted only upon clear proof that the title sought to be restored was indeed issued to the petitioner.[10] In this regard, Section 3 of Republic Act (RA) No. 26 enumerates the documents regarded as valid and sufficient bases for reconstitution of a transfer certificate of title:

SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property the description of which is given in said documents, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

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[8] *Lee v. Republic*, 418 Phil. 793, 803 (2001).

[9] *Republic v. Intermediate Appellate Court*, G.R. No. 68303, January 15, 1988, 157 SCRA 62, 66.

[10] *Republic v. Sanchez*, G.R. No. 146081, July 17, 2006, 495 SCRA 248, 274.

(f) *Any other document* which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

The instant petition for reconstitution is anchored on Section 3(f) of RA No. 26, with respondent proffering three significant documents — a tax declaration, survey plan and technical descriptions of each lot.

The Court has already settled in a number of cases that, following the principle of *ejusdem generis* in statutory construction, "any document" mentioned in Section 3 should be interpreted to refer to documents similar to those previously enumerated therein.[11] As aptly observed by the petitioner, the documents enumerated in Section 3(a), (b), (c), (d) and (e) are documents that had been issued or are on file with the Register of Deeds, thus, highly credible.

Moreover, they are documents from which the particulars of the certificate of title or the circumstances which brought about its issuance could readily be ascertained. After all, the purpose of reconstitution proceedings under RA No. 26 is the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land.[12] Consequently, a petitioner's documentary evidence should be able to establish that the lost or destroyed certificate of title has, in fact, been issued to the petitioner or his predecessor-in-interest and such title was in force at the time it was lost or destroyed.[13]

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[11] *Republic v. Holazo*, G.R. No. 146846, August 31, 2004, 437 SCRA 345; *Heirs of Dizon v. Discaya*, 362 Phil. 536, 544 (1999); *Republic v. Intermediate Appellate Court, supra* note 9.

[12] *Republic v. Sanchez, supra* note 10.

[13] Section 15 of RA 26 states:

SEC. 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and *that the petitioner is the registered owner of the property or has an interest therein,* that the said *certificate of title was in force at the time it was lost or destroyed*, and that the *description, area and boundaries of*

The tax declaration obviously does not serve as a valid basis for reconstitution. For one, we cannot safely rely on Tax Declaration No. 15003-816 as evidence of the subject property being covered by TCT No. T-22868 in the name of respondent because a tax declaration is executed for taxation purposes only and is actually prepared by the alleged owner himself.[14] In fact, in *Heirs of Eulalio Ragua v. Court of Appeals*,[15] the Court pronounced that a tax declaration is not a reliable source for the reconstitution of a certificate of title.

At most, the tax declaration can only be *prima facie* evidence of possession or a claim of ownership, which however is not the issue in a reconstitution proceeding. A reconstitution of title does not pass upon the ownership of the land covered by the lost or destroyed title [16] but merely determines whether a re-issuance of such title is proper.

As for the survey plan and technical descriptions, the Court has previously dismissed the same as not the documents referred to in Section 3(f) but merely additional documents that should accompany the petition for reconstitution as required under Section 12 of RA 26 and Land Registration Commission Circular No. 35.[17] Moreover, a survey plan or technical description prepared at the instance of a party cannot be considered in his

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the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents, which pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but each dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act. (Emphasis supplied)

[14] See Section 202, Chapter II, Local Government Code.

[15] 381 Phil. 7 (2000).

[16] *Amoroso v. Alegre, Jr.,* G.R. No. 142766, June 15, 2007, 524 SCRA 641, 653.

[17] *Heirs of Dizon v. Discaya, supra* note 11, at 545.

favor, the same being self-serving.[18] Further, in *Lee v. Republic*,[19] the Court declared the reconstitution based on a survey plan and technical descriptions void for lack of factual support.

Once again, we caution the courts against the hasty and reckless grant of petitions for reconstitution. Strict observance of the rules is vital to prevent parties from exploiting reconstitution proceedings as a quick but illegal way to obtain Torrens certificate of titles over parcels of land which turn out to be already covered by existing titles.[20] Courts should bear in mind that should the petition for reconstitution be denied for lack of sufficient basis, the petitioner is not left without a remedy. He may still file an application for confirmation of his title under the provisions of the Land Registration Act, if he is in fact the lawful owner.[21]

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision of the Court of Appeals dated September 23, 2002 is *REVERSED* and *SET ASIDE*. The petition for reconstitution is *DENIED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

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[18] *Rizal Cement Co., Inc. v. Villareal*, No. L-30272, February 28, 1985, 135 SCRA 15, 23, reiterated in *Republic v. El Gobierno de las Islas Filipinas*, 459 SCRA 533, 547 (2005).

[19] *Supra* note 8.

[20] *Republic v. Sanchez*, *supra* note 10.

[21] Section 15, RA No. 26, *supra* note 13.

SECOND DIVISION

[G.R. No. 173114. September 8, 2008]

JAYSON DANDAN, *petitioner, vs.* **ARFEL REALTY & MANAGEMENT CORP., RAFAEL FELIX and SPS. EMERITA and CARLITO SAURO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESSENTIAL REQUISITES OF CONTRACTS; CONSENT; WHEN VITIATED BY MISTAKE. — Mistake may invalidate consent when it refers to the substance of the thing which is the object of the contract or to those conditions which have principally moved one or both parties to enter into the contract. Mistake of law as a rule will not vitiate consent.

2. ID.; ID.; BINDING EFFECT OF CONTRACTUAL STIPULATIONS; COURTS ARE NOT AUTHORIZED TO EXTRICATE PARTIES FROM THE NECESSARY CONSEQUENCES OF THEIR ACTS. — Courts are not authorized to extricate parties from the necessary consequences of their acts, and the fact that the contractual stipulations may turn out to be financially disadvantageous will not relieve parties thereto of their obligations.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIZED DOCUMENT; NATURE. — [A] notarized document x x x has in its favor the presumption of regularity and carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.

4. ID.; ID.; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; IT IS PRESUMED THAT A PERSON TAKES ORDINARY CARE OF HIS CONCERNS. — [U]nder Section 3(d), Rule 131 of the Rules of Court, it is presumed that a person takes ordinary care of his concerns. Hence, the natural presumption is that one does not sign a document without first informing himself of its contents and consequences.

APPEARANCES OF COUNSEL

Alan A. Leynes for petitioner.
Chavez Miranda Aseoche Law Office for Arfel Realty & Management Corp. and R. Felix.

D E C I S I O N

TINGA, *J.*:

This Petition for Review[1] assails the Court of Appeals' Decision[2] dated 22 December 2005 as well as its Resolution[3] dated 13 June 2006 sustaining the validity of the memorandum of agreement executed between petitioner Jayson Dandan (Dandan) and respondent Arfel Realty & Management Corp. (Arfel Realty), and holding the former liable thereunder.

The antecedents follow.

On 7 March 1992, Arfel Realty, represented by its president and general manager Rafael Felix, sold to Dandan a parcel of land covered by Transfer Certificate of Title No. T-10527 and designated as Lot 3 Block 16 situated in Barrio Pamplona, Las Piñas, Metro Manila for the price of ₱320,000.00. The sale is evidenced by a Deed of Absolute Sale.[4]

The lot was previously the subject of a Contract to Sell[5] executed between Arfel Realty and the spouses Emerita and Carlito Sauro (the Sauros). Under this contract, the Sauros undertook to pay the purchase price of ₱690,000.00, with a 50% down payment of ₱345,000.00 and the balance payable

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[1] *Rollo,* pp. 8-22.

[2] *Id.* at 24-34; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Elvi John S. Asuncion and Noel G. Tijam, Twelfth Division.

[3] *Id.* at 36-37.

[4] *Id.* at 336-338.

[5] Records, Vol. 1, pp. 1-5.

in sixty (60) equal installments of ₱9,528.52 including interest of 22% per annum.[6] While the Sauros claimed to have fully paid for the subject lot in the total amount of ₱799,601.59 and demanded the delivery of title,[7] Arfel Realty asserted that the several checks drawn by the Sauros to effect payment were either dishonored by the bank due to insufficiency of funds or were drawn against a closed account. Thus, the Sauros allegedly still had an unpaid balance of ₱299,614.23.[8]

According to Arfel Realty, Dandan was made aware of its previous transaction with the Sauros.[9] On 10 April 1992, a Memorandum of Agreement (the Agreement)[10] was executed between Arfel Realty and Dandan with the consideration representing the balance due to Arfel Realty from the previous sale to the Sauros. The Agreement, bound Dandan to assume all liabilities arising from the Deed of Absolute Sale and held Arfel Realty free from any suit or judgment by reason of said sale.[11]

On 2 June 1992, the Sauros filed a complaint for specific performance against Arfel Realty before the Housing and Land Use Regulatory Board (HLURB). [12] Arfel Realty filed its answer with a counterclaim for moral damages and attorney's fees. [13] Arfel Realty followed this on 23 September 1992 with a third-party complaint against Dandan, praying indemnification from Dandan for whatever is adjudged against it in favor of the Sauros.[14]

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[6] *Id.* at 4.

[7] *Id.* at 39.

[8] *Id.* at 42.

[9] *Rollo*, p. 47.

[10] *Id.* at 339.

[11] *Id.* at 339.

[12] *Id.* at 38-45.

[13] *Id.* at 44.

[14] *Id.* at 49.

Dandan filed his Position Paper,[15] contending that the HLURB had no jurisdiction over the third-party complaint as the case did not involve the sale of a house and lot but rather a personal action for indemnification and payment of attorney's fees. He also questioned the validity of the Agreement in that it was not supported by any valuable consideration. He argued that he affixed his signature to the Agreement unaware of its legal import and without any intention to be bound by it.[16]

On 22 April 1993, the Office of Appeals, Adjudication and Legal Affairs (OAALA) of the HLURB rendered a decision,[17] the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered directing respondents Arfel and Felix to refund to complainant the amount of ₱566,515.76 at 12% interest per annum from the time of the filing of complaint on June 4, 1992.
>
> In the third party claim, third party respondent Dandan is hereby directed to pay respondents Arfel and Felix the sum of ₱566,515.76 at 12% interest per annum from the time of the filing of the complaint on September 23, 1992.
>
> All other claims are hereby DISMISSED.
>
> IT IS SO ORDERED.[18]

The OAALA held that Arfel Realty committed a serious breach of contract when despite the subsistence of its Contract to Sell with the Sauros it still sold the subject property to Dandan. It declared that such breach entitled the Sauros to rescind the contract and demand the refund of all their payments.[19]

Anent the third-party claim, the OAALA sustained the validity of the Agreement and held that the same did not have the effect

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[15] *Id.* at 50-59.

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

[17] *Id.* at 60-66.

[18] *Id.* at 66.

[19] *Id.* at 64-65.

of novating the contract between Arfel Realty and the Sauros. It accordingly held Dandan liable thereunder.

On separate appeals by Arfel Realty and Dandan, the HLURB, through its Board of Commissioners, made the following modifications:[20]

> Respondents ARFEL REALTY AND MANAGEMENT CORPORATION and RAFAEL A. FELIX are hereby ordered to refund to the complainants, SPS. EMERITA AND CARLITO SAURO, the total amounts paid (including amortization interests but excluding penalty interests) at twelve percent (12%) interest per annum, computed from 04 June 1992, the date of the filing of the complaint, until fully paid.
>
> Third party respondent, JAYSON DANDAN, is hereby ordered to pay third party complainants, ARFEL REALTY AND MANAGEMENT CORPORATION and RAFAEL A. FELIX, the amount equivalent to the total payments made by the SPS. SAURO (including amortization interests but excluding penalty interests) with twelve percent (12%) interest per annum, computed from 23 September 1992, the date of the filing of the third party complaint, until fully paid.
>
> All other claims and counterclaims are hereby dismissed.
>
> SO ORDERED. [21]

The HLURB Board of Commissioners declared that the sale of the property to Dandan during the subsistence of the Contract to Sell was fraudulent. Thus, Arfel Realty is obligated to refund the payments made by the Sauros. Furthermore, it ruled that Dandan is liable under the Agreement.[22]

Only Dandan interposed an appeal to the Office of the President (OP).[23] On 30 September 1997, the OP in O.P. Case No. 96-A-6362 reversed the HLURB's decision insofar as Dandan is concerned and nullified the questioned Agreement for lack of consideration, thus:

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[20] *Id.* at 67-77.

[21] *Id.* at 76-77.

[22] *Id.* at 165-171.

[23] *Id.* at 205-217.

The above holding (HLURB Decision) would be unassailable had the Memorandum of Agreement dated April 10, 1992, been supported by valuable consideration. However this is not the case. There was no showing that any valuable consideration emanated from one party to the other and vice-versa. On the part of the appellant, there was absolutely no reason for him to enter into such agreement. The absolute Deed of Sale was already executed a month before (March 7, 1992), and there was nothing lacking that would make his situation more secure and invulnerable. The house and lot were [was] already his on the date of the execution of the Deed of Sale. We, therefore, find reasonable and convincing appellant's claim that he lent his signature in the agreement as a favor to Rafael Felix, not knowing its legal import and implication. Contracts without cause or consideration produce no effect whatever.

Moreover, to affirm *in toto* the appealed decision is to penalize appellant for the breach of contract committed by respondents and third-party complainants in selling to him the controverted lot, there being absolutely no showing that he was in cahoots with the vendors in said transaction. On the contrary, the records show that he was a purchaser in good faith and for value.[24]

The OP however, maintained the liability of Arfel Realty in favor of the Sauros.

Aggrieved, Arfel Realty filed a Petition for Review[25] with the Court of Appeals seeking the reversal of the OP's decision.

During the pendency of the appeal, Arfel Realty and the Sauros entered into a compromise settlement whereby the former acknowledged its liability to the latter and committed to pay them the amount of ₱966,515.76.[26] Consequently, Arfel Realty filed a manifestation waiving its right to proceed against the Sauros but maintaining its suit against Dandan.[27]

With the case reduced to a controversy between Dandan and Arfel Realty, the appellate court ruled in favor of Arfel

[24] *Id.* at 215-216.

[25] *Id.* at 105-113.

[26] See *id.* at 282; ₱566,515.76 represents the principal and ₱400,000.00, the interest.

[27] *Id.* at 271.

Realty. The appellate court sustained the validity of the Agreement and rejected the notion that no consideration was given to support to the same. It pointed out as consideration Dandan's advantage of paying only the remaining balance due under the previous Contract to Sell the subject property to the Sauros. It also relied on the presumption that every contract has sufficient consideration.[28]

The Court of Appeals denied Dandan's motion for reconsideration. Hence, the instant petition.

The issue to be resolved is whether Dandan is bound by the Agreement, the validity of which devolves on the concurrence of three requisites, namely: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.[29]

While there is no dispute as to the object of the contract, Dandan harps on vitiation of consent and lack of consideration to exculpate himself from the legal consequences of the Agreement. He claims that he was merely implored to sign the Agreement as an act of accommodation, not understanding its legal import and never intending to assume any further liability other than what he paid for under the Deed of Absolute Sale.[30]

Arfel Realty counters that Dandan voluntarily signed the Agreement and fully understood its contents.[31] It explains that during the negotiation of the sale of the property to Dandan, the latter was advised of the previous transaction with the Sauros. Based on such information, Dandan allegedly negotiated to pay only half of the true value of the property to which Arfel Realty obliged but on the condition that they would execute an Agreement providing that Dandan shall hold Arfel Realty free from any liability in the event that the Sauros file any suit against it.[32]

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

[29] NEW CIVIL CODE, Art. 1318.

[30] *Rollo*, p. 411.

[31] *Id.* at 184.

[32] *Id.* at 172.

The determination of the existence of a valid consent principally rests on the provisions of the Agreement itself. Of course, the finding that Dandan was made aware of the previous transaction between Arfel Realty and the Sauros prior to the signing of the Agreement is a great boost. Arfel Realty's assertion that Dandan knew of the previous contract between it and the Sauros was not rebutted by the latter.

In upholding the existence of consent, both the HLURB and the Court of Appeals relied on the clear and plain language of the Agreement which expressly mentions that Dandan was aware of the transaction between Arfel Realty and the Sauros when he bought the subject property. The Agreement is hereby reproduced, thus:

MEMORANDUM OF AGREEMENT

With reference to the DEED OF ABSOLUTE SALE executed by and between ARFEL REALTY and Management Corporation and JAYSON M. DANDAN dated March 7, 1992, covering a House and Lot under TCT No. T-10527; **it is understood that the consideration represents only the balance due ARFEL REALTY from the previous sale of this House and Lot to MRS. EMERITA SAURO**.

JAYSON M. DANDAN, Buyer has in effect bought the House and Lot in question fully aware of the previous transaction with MRS. EMERITA R. SAURO, and as such assumes all liabilities caused by third party claims by reason of the above sale. Assumption of liabilities shall include but will not be limited to holding the SELLER, ARFEL REALTY and MANAGEMENT CORP., free and harmless from any suit or judgment that may be rendered by reason of the above sale.[33] [Emphasis supplied]

It can be clearly inferred from the Agreement that Dandan was aware of the previous contract to sell from which Arfel received partial payment from the Sauros. Thus, when said property was sold to Dandan, he had the benefit of paying only the remaining balance due from the said previous contract. It is for this consideration that Dandan agreed to expressly assume all the liabilities that might arise by reason of the sale to him.

[33] *Id.* at 339.

Viewed from a different standpoint, the Agreement was contemporaneously executed with the Deed of Absolute Sale thereby making the former a supplement to the latter. Therefore, the Agreement should be construed as a mere continuation of the Deed of Absolute Sale with the same consideration supporting both contracts, that is, Dandan's advantage of paying only the remaining balance due under the previous contract to sell to the Sauros.

The naked claim that Dandan signed the Agreement without understanding its legal import will not exculpate him from its legal ramifications. Mistake may invalidate consent when it refers to the substance of the thing which is the object of the contract or to those conditions which have principally moved one or both parties to enter into the contract.[34] Mistake of law as a rule will not vitiate consent.[35]

Without doubt, Dandan is bound by the terms of the Agreement, as well as by all the necessary consequences thereof. Courts are not authorized to extricate parties from the necessary consequences of their acts, and the fact that the contractual stipulations may turn out to be financially disadvantageous will not relieve parties thereto of their obligations.[36]

Further, the Agreement was duly acknowledged before a notary public. As a notarized document, it has in its favor the presumption of regularity and carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[37]

Further still, under Section 3(d), Rule 131 of the Rules of Court, it is presumed that a person takes ordinary care of his concerns. Hence, the natural presumption is that one does not

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[34] NEW CIVIL CODE, Art. 1331.

[35] Art. 1334 provides for the exception and states that mutual error as to the legal effect of an agreement when the real purpose of the parties is frustrated may vitiate consent.

[36] *Torres v. Court of Appeals*, 378 Phil. 170, 179 (1999).

[37] *De la Cruz v. De La Cruz*, 464 Phil. 812, 822 (2004).

sign a document without first informing himself of its contents and consequences.[38]

The foregoing disquisition on valid consent also supports the presence of the third element of a contract which is cause or consideration.

WHEREFORE, premises considered, the instant Petition is DENIED for lack of merit. The Decision of the Court of Appeals dated 31 July 2007 reinstating the judgment of the HLURB Board of Commissioners dated 18 July 1994, is AFFIRMED. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173891. September 8, 2008]

HRS. OF THE LATE SPS. LUCIANO P. LIM and SALUD NAKPIL BAUTISTA, namely: LUIS LIM, LOURDES LIM OLIVERA and LEONARDO LIM, *petitioners, vs.* **THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, Branch 216, as Successor of the late Judge Marciano Bacalla of the said Court; AMPARO CAÑOSA; and the REGISTER OF DEEDS OF QUEZON CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY-IN-INTEREST; EXPLAINED. — A real party-in-interest is defined as the party who stands to

[38] *Lee v. Court of Appeals,* 426 Phil. 290, 316 (2002).

be benefited or injured by the judgment or the party entitled to the avails of the suit. "Interest" within the meaning of the rule means "material interest or 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." To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced.

2. ID.; ID.; ANNULMENT OF JUDGMENTS; MERE FILING OF A PETITION FOR ANNULMENT OF JUDGMENT DOES NOT GUARANTEE THE HOLDING OF TRIAL OR RECEPTION OF EVIDENCE. — Mere filing of a petition for annulment of judgment does not guarantee the holding of trial or reception of evidence. A petition for annulment of judgment may in fact be dismissed outright if it has no *prima facie* merit. With more reason that the Court of Appeals may dismiss a petition even without a hearing if it finds that based on the averments in the petition and the responsive pleading, the annulment of the assailed judgment is not warranted.

3. CIVIL LAW; LAND TITLES AND DEEDS; CERTIFICATE OF TITLE; CANNOT BE SUBJECT TO COLLATERAL ATTACK. — It is a well-settled doctrine that a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioners.
Rudolph Dilla Bayot for private respondent.

D E C I S I O N

TINGA, *J.*:

This treats of the Petition for Review[1] on *certiorari* of the Resolutions of the Court of Appeals in CA G.R. SP

[1] *Rollo*, pp. 13-36.

No. 83013 dated 31 March 2006[2] and 26 July 2006,[3] which respectively dismissed petitioners' petition for annulment of judgment[4] and denied reconsideration.

On 9 September 1999, Amparo E. Cañosa (respondent Cañosa) filed a petition before the Regional Trial Court of Quezon City seeking the reconstitution of the original Transfer Certificate of Title (TCT) No. 169395 of the Register of Deeds of the same city. Due to the non-appearance of representatives from the Office of the Solicitor General and the Office of the City Prosecutor, as well as the absence of all other oppositors, the trial court allowed the *ex parte* presentation of evidence before the branch clerk of court. Convinced that the jurisdictional requirements were complied with and finding merit in the petition, the trial court, on 29 December 1999, ordered the reconstitution of the original and owner's duplicate copy of TCT No. 169395.[5]

On 24 March 2004, petitioners filed a verified petition for the annulment of the trial court's decision.[6] According to petitioners, their parents, spouses Luciano P. Lim and Salud Nakpil Bautista, are the registered owners of a parcel of land located in Old Balara, Quezon City which they acquired from Domingo L. Santos. The lot contained an area of 795 square meters more or less and was covered by TCT No. 27997. Furthermore, they alleged that their parents had been in actual physical possession of the property, which they continued after the death of their parents. When a fire allegedly razed the

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[2] *Id.* at 38-43.

[3] *Id.* at 45-46. Both resolutions were penned by Associate Justice Aurora Santiago-Lagman, with Presiding Justice Ruben T.Reyes (now a member of this Court) and Associate Justice Rebecca de Guia-Salvador concurring.

[4] *Id.* at 49-56. The petition is captioned *"Heirs of the Late Spouses Luciano P. Lim and Salud Nakpil Bautista, namely; Luis Lim, Lourdes Lim Olivera and Leonardo Lim v. The Presiding Judge of the Regional Trial Court of Quezon City, Branch 216,* as Successor of the late Judge Marciano Bacalla of the said Court; Amparo Cañoza; and the Register of Deeds of Quezon City."

[5] *Rollo*, pp. 62-64.

[6] *Supra* note 4.

Quezon City Hall in June 1988, among the records destroyed was the original copy of TCT No. 27997 and thus, one of the petitioners applied for and was issued a reconstituted title, TCT No. RT-97223, in September 1994.[7]

Petitioners claimed that when respondent Cañosa filed a petition for the reconstitution of TCT No. 169395, covering 33,914 sq m on 9 September 1999, a portion thereof with an area of 795 sq m was already covered by TCT No. RT-97223. In addition, they insisted that the petition for reconstitution did not comply with the requirements found in Sections 12 and 13 of Republic Act (R.A.) No. 26 as it failed to state specifically the boundaries of the property subject of the petition as well as the names of the occupants or persons in possession of the property. Petitioners considered these circumstances as extrinsic fraud, a ground for the annulment of the trial court's judgment.[8]

For her part, respondent Cañosa alleged that there was no fraud and that the jurisdictional requirements of notice and publication had been complied with; thus, the trial court did not err when it ordered the reconstitution of TCT No. 169395. She also claimed that the title issued to petitioners' predecessors-in-interest was spurious because it emanated from Psd-17268 which covered a lot located in Nueva Ecija and not Quezon City, and that the Assistant Director of Lands who signed the alleged plan was not an authorized signatory.[9]

The Court of Appeals dismissed the petition in its 31 March 2006 Resolution. It found that "the property claimed by petitioners is entirely different and does not even form part of the land covered by TCT No. 169395 sought to be reconstituted by private respondent."[10] The Court of Appeals observed that both parties had consistently put claims over a portion of the subject property, a matter which it could not act on and pass

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[7] CA *rollo*, pp. 3-4.

[8] *Id.* at 4-6.

[9] *Id.* at 107-119; amended Answer With Counter-claim (and with Motion to Dismiss).

[10] *Rollo*, p. 42.

upon in a petition for annulment of judgment. Thus it ruled that "the question as to who has the better right and legal claim of ownership over the property subject matter of this case is a material fact that should be inquired into by the proper trial court being in a proper position to determine such issue."[11]

Petitioners sought reconsideration of the resolution, but their motion for reconsideration was denied by the Court of Appeals on 26 July 2006 for lack of merit.[12]

Now, petitioners, on the one hand, posit that the Court of Appeals erred when it made a finding of fact through a mere physical comparison of the technical descriptions in the TCTs without first allowing the parties to vindicate their respective claims, at least during the pre-trial or more properly, in a trial held for the purpose. They also question the Court of Appeals' refusal to resolve the issue of ownership of the subject lot, arguing that in a petition under Rule 47, Section 6 of the Rules of Court, the appellate court is allowed to be a trier of facts.[13]

Petitioners reiterate that Judge Bacalla's decision is null and void for having been issued without jurisdiction and for having been secured through extrinsic fraud. They argue that the trial court did not acquire jurisdiction over the property subject of the reconstitution proceedings because said property is already covered by other existing titles in the name of other owners, many of which have been administratively reconstituted after their original TCTs were destroyed by fire. They point out the finding of the former head of the EDP unit of the Quezon City government, a certain Luis Lim, that no records exist of Yu Chi Hua's (predecessor of respondent) ownership of 33,914 sq m of land in Quezon City, proof that Yu Chi Hua's/respondent's title did not exist nor its original destroyed by fire. Anent extrinsic fraud, petitioners claim that because of the failure to comply with the notice and other requirements in reconstitution proceedings, interested/concerned persons, including petitioners,

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[11] *Id.* at 43.

[12] *Supra* note 3.

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

have not been duly informed and have thus been prevented from filing their objections/oppositions to the petition for reconstitution. Worse, despite the fatal defects in the required notice and jurisdictional requirements, Judge Bacalla allegedly still proceeded to render his assailed decision.[14]

Respondent Cañosa, on the other hand, maintains that the Court of Appeals followed the correct procedure when it dismissed the petition for annulment of judgment because under Section 5, Rule 47 of the Rules of Court, it may dismiss outright such a petition if it finds no substantial merit in it. She points out that petitioners did not allege nor present anything that would contradict the technical description of the two titles and that the certificates of title of the two lots are conclusive on all matters contained therein, not only on ownership but also on its location and its metes and bounds.[15]

Considering that her lot is not inside, affected by or subsumed in respondent Cañosa's lot, petitioners allegedly have no personality and right to be notified of the reconstitution proceedings nor do they have any right to file the petition for annulment of judgment.[16] Respondent Cañosa also argues that a petition for annulment of judgment is not the proper remedy because what petitioners really wanted is the determination of ownership which the Court of Appeals, however, has no jurisdiction to decide in the first instance.[17] She adds that the petition was already time-barred, it having been filed more than four (4) years from 2 March 2000, the date of the issuance of her reconstituted title.[18] Moreover, she argues that the petition for annulment seeks the nullification of the reconstituted title and thus constitutes a collateral attack on the title of her property, which is not allowed under the law.[19]

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[14] *Id.* at 26-29.

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

[16] *Id.* at 108.

[17] *Id.* at 110-111.

[18] *Id.* at 112.

[19] *Id.*

We dismiss the petition.

In a petition for annulment of judgment, the court is tasked to look if there exists extrinsic fraud or lack of jurisdiction.[20] However, in this case, a preliminary but critical question has to be disposed of before a proper determination can be arrived at—that is, whether petitioners are the real parties-in-interest.

A real party-in-interest is defined as the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. "Interest" within the meaning of the rule means "material interest or 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."[21] To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced.[22]

The Court of Appeals concluded that petitioners' and respondent Cañosa's properties are different, thus:

> A simple comparison of the transfer certificate of titles presented by the parties reveal that the property claimed by petitioners is entirely different and does not even form part of the land covered by TCT No. 169395 sought to be reconstituted by private respondent.
>
> The technical description in petitioners' title described their alleged property as Lot 10 Blk. 3 of the subdn plan. [P]sd-34194 being a portion of Lot 22-D-3 described on plan Psd-17268, GLRO Rec. No. 1037. On the other hand, private respondent's property covered by TCT No. 169395 is clearly described as Lot 22-A of the subdn plan (LRC) Psd 74624, being a portion of Lot 22 described on plan Psu-32606, LRC (GLRC) Rec. No. 1037. Petitioners' title therefore, covers a parcel of land certainly not the property covered by title acquired by private respondent from Yu Chi Hua. Thus, while it is true that both the described properties from the contending

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[20] RULES OF COURT, Rule 47, Sec. 2.

[21] *Ortigas & Co., Ltd. v. Court of Appeals, et al.*, 400 Phil. 615, 625 (2000).

[22] *BPI Family Bank v. Buenaventura*, G.R. No. 148196, 30 September 2005, 471 SCRA 431, 442.

parties emanated from Lot 22, it is however, apparent that the two properties individually claimed by them are entirely different and distinct from one another.[23]

We reviewed the titles presented by both parties in the proceedings below and arrived at the same conclusion as that of the Court of Appeals.[24] Indeed, per their TCT,

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[23] *Rollo*, p. 42.

[24] The technical description of petitioners' title, TCT NO. RT-97223 (27997) reads:

A parcel of land (Lot 10, Blk. 3 of the subdn. Plan Psd-34194, being a portion of Lot 22-D-3 described on plan Psd-17268, GLRO Rec. No. 1037), situated in Quezon City. Bounded on the N., by Lot 22-D-2-D of the plan Psd-20257; on the E., by Lot 11, Blk. 3; on the S., by Lot 9, Blk. 3; and on the W., by Road Lot 3; all of the subdn. plan. Beginning at a pt. marked "1" on plan, being S.41 deg. 55 W.8776.80 m. from BLLM 1, Mp. of Montalban, Rizal; thence N.7 deg. 04'E., 5.85 m. to pt. 2; thence S. 89 deg. 11'E., 36.86 m. to pt. 3; thence S.7 deg. 00'W., 9.38 m. to pt. 4; thence S. 3 deg. 12'W., 11.60 m. to pt. 5; thence S. 88 deg. 46'W., 37.08 m. to pt. 6; thence N. 4 deg. 28'E., 16.46 m. to the pt. of beginning; containing an area of SEVEN HUNDRED NINETY FIVE SQUARE METERS (795), more or less. All pts. referred to are indicated on the plan and are marked on the ground by PLS cyl. conc. mons. 15x60 cm., Bearing true; declination 0 deg. 49'E., date of the orig. survey, Mar. 29-Nov. 5, 1921 and that of the subdn. survey, Oct. 16-19, and 23-25, 1951.

while TCT No. RT-120722 (169395) of respondent Cañosa reads:

A parcel of land (Lot 22-A of the subdn, plan (LRC) Psd-74624, being a portion of Lot 22 described on plan Psu-32606, LRC (CLRO) Rec. No. 1037), situated in the Mun. of Montalban, Prov. Of Rizal, Is. of Luzon. Bounded on the NW., & NE., along lines 3-6 by Lot 22-B; on the NE., & SE, along lines 6-8 & 8-1 by Lot 22-D both of the subdn. Plan; and on the SW., along lines 1-3 by Lot 822 of Piedad Estate. Beginning at a pt. marked "1" on plan, being S. 42 deg. 21'W., 8990.08 m. from BLIM 1, Mp. of Montalban; thence N. 2 deg. 58'W., 65.00 m. to pt. 2; thence N. 2 deg. 58'W., 56.40 m. to pt. 3; thence N. 77 deg. 05'E., 100. 58 m. to pt. 4; thence S. 49 deg. 03'E., 35.51 m. to pt. 5; thence S. 89 deg. 11'E., 143.28 m. to pt. 6; thence 4 deg. 11'E., 65.42 m. to pt. 7; thence S. 26 deg. 59'E., 56.03 m. to pt. 8; thence S. 89 deg. 22'W., 292.10 m. to pt. of beginning; containing an area of THIRTY THREE THOUSAND NINE HUNDRED FOURTEEN (33,914) SQ. METERS, more or less. All pts. referred to are indicated on the plan are marked on the ground by PS cyl. conc. mons. 15x60 cm., bearing true; decl. 1 deg. 00'E., date of original survey, Jan. 12, 1923 and that of the subdn. survey, Jan. 9-10, 1968.

petitioners' lot was derived from Lot-22-D-3, whereas respondent Cañosa's covers the entire Lot 22-A. Simple logic dictates that Lot 22-A is different from Lot-22-D-3, and that Lot -22-D-3 could not have been in Lot 22-A.

Petitioners are not real parties-in-interest because the reconstitution of the original and duplicate copy of TCT No. 169395 will have no effect on their property, the latter being different from, and not even a part of the property covered by the reconstituted title. One having no right or interest of his own to protect cannot invoke the jurisdiction of the court as a party plaintiff in an action, thus petitioners' petition for annulment of judgment was rightfully dismissed.

Petitioners impute error to the Court of Appeals when it dismissed their petition after it concluded, on the basis of its simple comparison of petitioners' and respondent's TCTs, that the properties covered by the two titles are entirely different. Petitioners argue that the Court of Appeals should have conducted a trial and received evidence; and having failed to do so, its conclusion was allegedly not only flawed but was also arrived at with grave abuse of discretion and without due process.[25] We do not agree.

The Court of Appeals did not dismiss the petition for annulment of judgment outright. In fact, it required respondent Cañosa to file her answer, and even allowed the filing of an amended answer-proof that it was predisposed to consider the arguments of both parties before it even decided to finally dismiss the petition. Mere filing of a petition for annulment of judgment does not guarantee the holding of trial or reception of evidence. A petition for annulment of judgment may in fact be dismissed outright if it has no *prima facie* merit.[26] With more reason that

[25] *Id.* at 24.

[26] RULES OF COURT, Rule 47, Sec. 5, Rule 47 provides:

SEC. 5. *Action by the court*. — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course, and summons shall be served on the respondent.

the Court of Appeals may dismiss a petition even without a hearing if it finds that based on the averments in the petition and the responsive pleading, the annulment of the assailed judgment is not warranted.

Petitioners also maintain that the Court of Appeals should have taken cognizance of the questions of fact which they raised in the petition for annulment of judgment, empowered as it were by Section 6, Rule 47 of the Rules of Court, which provides that:

> Sec. 6. Procedure. – The procedure in ordinary civil cases shall be observed. Should a trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court.

Petitioners utterly miss the point. To repeat, with the finding that the property described in their title is different from that of respondent Cañosa, the petition for annulment of judgment must necessarily fail. And that should put a stop on the matter. However, the Court of Appeals noted that both parties raised issues of ownership and spuriousness of their respective titles — with petitioners claiming that no records exist in the Quezon City Assessor's Office nor in the Taxation (Real Estate Division) of the ownership of respondent Cañosa's predecessor-in-interest over a 33,914 sq m land in Quezon City, and with respondent Cañosa asserting that the title issued to petitioners' predecessors-in-interest is a spurious, having emanated from a spurious private subdivision survey (Psd) plan. Obviously, the validity of the parties' respective titles is being attacked, in a proceeding which was brought merely to seek the nullification of an order of reconstitution. This cannot be allowed. It is a well-settled doctrine that a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law.[27] This is the very same reason why the Court of Appeals could not, and did not deign to, resolve the matter of ownership. The Court of Appeals' declaration that it is not a trier of facts must be taken within this context.

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[27] *Carreon v. Court of Appeals*, 353 Phil. 271, 283 (1998).

There is no more need to dwell on the issues of extrinsic fraud and lack of jurisdiction considering that petitioners are not real parties-in-interest. In any case, a perusal of the decision of the trial court shows that the jurisdictional requirements have been complied with.[28] The trial court also found that respondent Cañosa is the equitable owner of the property, having purchased the same from Yu Chi Hua, as evidenced by a deed of absolute sale.[29] By virtue of such sale, she came into possession of the owner's duplicate copy of the title,[30] and may thus file the petition for reconstitution as she in fact did.

WHEREFORE, the petition is DENIED, and the assailed resolutions of the Court of Appeals dated 31 March 2006 and 26 July 2006 are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

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

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[28] *Rollo*, p. 62.

[29] *Id.* at 63; RTC Decision.

[30] *Id.* Respondent Cañoza was also authorized by Yu Chi Hua, the registered title holder and owner, by virtue of a Special Power of Attorney, to file the petition for reconstitution. It appears that respondent was unable to register the deed of absolute sale in her favor because the fire destroyed the original copy of the title.

EN BANC

[A.M. No. 08-8-11-CA. September 9, 2008]

RE: LETTER OF PRESIDING JUSTICE CONRADO M. VASQUEZ, JR. ON CA-G.R. SP NO. 103692 [Antonio Rosete, *et al.* v. Securities and Exchange Commission, *et al.*]

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS INEFFICIENCY; UNDUE DELAY IN RESOLVING PENDING MOTIONS OR INCIDENTS WITHIN THE REGLEMENTARY PERIOD FIXED BY LAW, A CASE OF. — Canon 3, Rule 3.05 of the 1989 *Code of Judicial Conduct* (which applies in a suppletory manner to the *New Code of Judicial Conduct* for the Philippine Judiciary) provid[es] that: "Rule 3.05. – A judge shall dispose of the court's business promptly and decide cases within the required periods." Even Section 5, Canon 6 of the *New Code of Judicial Conduct* mandates that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Thus, it has become well-settled in jurisprudence that even just undue delay in resolving pending motions or incidents within the reglamentary period fixed by law is not excusable and constitutes gross inefficiency.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; CONSIDERED A GRAVE OFFENSE AND WARRANTS THE PENALTY OF DISMISSAL EVEN FOR THE FIRST OFFENSE. — Under Rule 140 of the Rules of Court, dishonesty is considered a serious offense that may warrant the penalty of dismissal from the service. Under Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is likewise considered a grave offense and warrants the penalty of dismissal even for the first offense. In the past, the Court has had the occasion to rule that: . . . dishonesty and falsification are considered grave offenses warranting the penalty of dismissal from service upon the commission

of the first offense. On numerous occasions, the Court did not hesitate to impose such extreme punishment on employees found guilty of these offenses. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for re-employment in the government service. **Dishonesty has no place in the judiciary**.

3. JUDICIAL ETHICS; JUDGES; EXPECTED TO CARRY OUT JUDICIAL DUTIES WITH APPROPRIATE CONSIDERATION FOR ALL PERSONS. — If judges and justices are expected to treat litigants, counsels and subordinates with respect and fairness, with more reason, that judges and justices should give their fellow magistrates the courtesy and professional regard due to them as their colleagues in the Judiciary. Thus, in Canon 5, Section 3 of the New Code of Judicial Conduct, judges are expected to "**carry out judicial duties with appropriate consideration for all persons, such as** the parties, witnesses, lawyers, court staff and **judicial colleagues**, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties."

4. ID.; ID; SHOULD AVOID ANY APPEARANCE OF IMPROPRIETY OR PARTIALITY WHICH MAY ERODE THE PEOPLE'S FAITH IN THE JUDICIARY. — [A]s the visible representation of the law and justice, judges are expected to conduct themselves in a manner that would enhance respect and confidence of the people in the judicial system. The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. This standard applies not only to the decision itself, but also to the process by which the decision is made. This Court will not hesitate to sanction with the highest penalty magistrates who exhibit manifest undue interest in their assigned cases.

5. ID.; ID.; SIMPLE MISCONDUCT AND CONDUCT UNBECOMING A JUSTICE OF THE COURT OF APPEALS; COMMITTED IN CASE AT BAR. — Canon 13 of the *Code of Professional Responsibility* for lawyers x x x provides that: **"A lawyer shall**

x x x refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court." x x x Justice Sabio's indiscreet and imprudent conversations regarding the Meralco case with his brother and Mr. De Borja and his actuations in the chairmanship dispute with Justice Reyes constitute simple misconduct and conduct unbecoming of a justice of the Court of Appeals which warrant the penalty of two (2) months suspension without pay.

6. REMEDIAL LAW; COURTS; COURT OF APPEALS; INTERNAL RULES OF THE COURT OF APPEALS; PRESIDING JUSTICE; AUTHORIZED TO ACT ON ANY MATTER INVOLVING THE COURT AND ITS MEMBERS. — Section 11, Rule VIII of the IRCA x x x provides: **"Sec. 11. x x x the Presiding Justice or any one acting in his place is authorized to act on any matter not covered by these Rules. Such action shall, however, be reported to the Court *en banc*."** x x x Section 5 (c), Rule I of the IRCA, provides: **"Sec. 5. Matters cognizable by the Court *en banc*.– The Court *en banc* shall, *inter alia*: (a) x x x (b) Adopt uniform administrative measures, procedures, and policies for the protection and preservation of the integrity of the judicial processes, x x x."**

APPEARANCES OF COUNSEL

Vitaliano N. Aguirre II for Justice B.L. Reyes.

D E C I S I O N

PER CURIAM:

The Judiciary, which is acclaimed as the firmest pillar of our democratic institutions, is vested by the Constitution with the power to settle disputes between parties and to determine their rights and obligations under the law. For judicial decisions, which form part of the law of the land, to be credible instruments in the peaceful and democratic resolution of conflicts, our courts must be perceived to be and, in fact be, impartial, independent, competent and just. To accomplish this end, it is imperative that members of the Judiciary from its highest magistrates to

its humblest employees adhere to the strictest code of ethics and the highest standards of propriety and decorum. Indeed, it is unfortunate that one of the country's second highest courts, the Court of Appeals, should be presently embroiled in scandal and controversy. It is this Court's bounden duty to determine the culpability or innocence of the members of the Judiciary involved in the said controversy and to discipline any one whose conduct has failed to conform to the canons of judicial ethics, which uphold integrity, independence, impartiality, competence and propriety in the performance of official functions.

The present administrative matter arose from the Letter dated August 1, 2008 of Court of Appeals Presiding Justice Conrado M. Vasquez, Jr. (Presiding Justice Vasquez), referring to this Court for appropriate action the much publicized dispute and charges of impropriety among the justices of the Court of Appeals (CA) involved in CA-G.R. SP No. 103692 entitled "*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*"

To assist in its investigation of this sensitive matter, the Court in its Resolution dated August 4, 2008 constituted a three-person panel (the "Panel of Investigators") composed of retired Justices of the Court; namely, Mme. Justice Carolina Griño-Aquino as Chairperson, Mme. Justice Flerida Ruth P. Romero and Mr. Justice Romeo J. Callejo, Sr. as Members. The Panel of Investigators was tasked to investigate the (a) alleged improprieties of the actions of the Justices of the Court of Appeals in CA-G.R. SP No. 103692 (*Antonio V. Rosete, et al. v. SEC, et al.*); and (b) alleged rejected offer or solicitation of bribe disclosed respectively by Mr. Justice Jose Sabio and Mr. Francis de Borja.

A narration of relevant events and facts, as found by the Investigating Panel, follows:

On April 15, 2008, Justice Bienvenido L. Reyes (Justice Reyes), then Chairperson of the Ninth Division of the CA, filed an application for leave from May 15, 2008 to June 5, 2008.[1]

[1] Affidavit dated August 7, 2008 of Justice Reyes, par. 2.

In Office Order No. 149-08-CMV dated May 14, 2008 issued by Presiding Justice Vasquez, Justice Jose C. Mendoza (Justice Mendoza) was designated by the Raffle Committee as Acting Chairman of the Ninth Division during the absence of Justice Reyes. Apart from his duties as regular senior member of the Fifth Division, Justice Mendoza was authorized "to act on all cases submitted to the Ninth Division for final resolution and/or appropriate action, except *ponencia*, from May 15, 2008 to June 5, 2008 or until Justice Reyes reports back for duty." The said office order likewise applied to the other Division(s) where Justice Reyes had "participated or took part as regular member or in an acting capacity."[2]

On May 29, 2008, Antonio V. Rosete, Manuel M. Lopez, Felipe B. Alfonso, Jesus P. Francisco, Christian S. Monsod, Elpidio L. Ibañez, and Francis Giles B. Puno, as officers, directors and/or representatives of the Manila Electric Company (hereinafter to be collectively referred to as "Meralco"), filed with the Court of Appeals a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and temporary restraining order (TRO) against the Securities and Exchange Commission (SEC), Commissioner Jesus Enrique G. Martinez, Commissioner Hubert B. Guevarra, and the Government Service Insurance System (GSIS).[3] Aside from the application for immediate issuance of a TRO, petitioners prayed for the issuance of a preliminary injunction that should thereafter be declared permanent, as well as a declaration of nullity of the cease and desist and show cause orders issued by the SEC through Commissioner Martinez. The petition was received by the CA at 10:49 a.m. on May 29, 2008 and docketed as CA-G.R. SP No. 103692.

On the same day, petitioners simultaneously filed at 10:48 a.m. an urgent motion for a special raffle. Presiding Justice Vasquez granted the motion in a handwritten note on the face

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[2] *Rollo* of A.M. No. 08-8-11-CA, p. 383.

[3] The petition was filed by counsel for Meralco, Quaison Makalintal Barot Torres Ibarra & Sison through Atty. Roel Eric C. Garcia.

of the urgent motion,[4] and CA-G.R. No. 103692 was raffled to Justice Vicente Q. Roxas (Justice Roxas).[5] At 3:10 p.m., the Office of Presiding Justice Vasquez received a letter from Atty. Estrella C. Elamparo (Atty. Elamparo), Chief Legal Counsel of the GSIS, requesting the re-raffling of the case "in the presence of the parties in the interest of transparency and fairness."[6] At 4:10 p.m. on that day, the GSIS filed an *ex-parte* motion to defer action on any incident in the petition pending the resolution of their motion for the re-raffle of the case.[7]

Atty. Elamparo, accompanied by Atty. Orlando P. Polinar, also of the GSIS Law Office, personally filed the urgent motion to defer action on the petition pending the resolution of their motion to re-raffle the case. Since the receiving clerk of the Court of Appeals could not assure them that the motion would be transmitted to the Court of Appeals Division, Attys. Elamparo and Polinar allegedly went to the office of Justice Roxas "for the sole purpose of personally furnishing him a copy" of the motion.[8] They initially talked to a male clerk who referred them to one of the lawyers, who, however, told them that it was not possible for them to personally hand a copy of the motion to Justice Roxas. Thus, Attys. Elamparo and Polinar left a copy of the motion to the staff but no one wanted to sign and acknowledge receipt of the copy.[9]

On May 30, 2008, Justice Reyes filed an application for the extension of his leave until June 6, 2008.[10] In the meantime, Justice Mendoza, who had been designated to replace Justice Reyes during the latter's absence, informed Justice Roxas through a letter that he (Justice Mendoza) was inhibiting from the case

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[4] *Rollo* of CA-G.R. SP No. 103692, p. 178.

[5] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 1.

[6] Annex A to Affidavit dated August 19, 2008 of Atty. Estrella C. Elamparo.

[7] *Rollo* of CA-G.R. SP No. 103692, p. 185.

[8] Affidavit dated August 19, 2008 of Atty. Elamparo, par. 7.

[9] Affidavit dated August 19, 2008 of Atty. Elamparo, par. 7.

[10] Affidavit dated August 7, 2008 of Justice Sabio, par. 1.

on the ground that he used to be a lawyer of the Meralco.[11] Hence, in an "Emergency Request for Raffle," Justice Roxas informed the Raffle Committee about the inhibition.[12]

Justice Jose L. Sabio, Jr. (Justice Sabio) was assigned as Acting Chairman of the Ninth Division by raffle, "in lieu of Justice Mendoza."[13] At 11:30 a.m., the office of Justice Myrna Dimaranan-Vidal (Justice Dimaranan-Vidal) received a notice of emergency deliberation with the new Acting Chairman of the Special Ninth Division, apparently sent by Justice Roxas, stating that her presence and that of Justice Sabio, Jr. were "indispensable" on account of the "national interest" involved in CA-G.R. SP No. 103692.[14]

Meanwhile, Atty. Elamparo "received a telephone call from somebody who did not identify herself but (who) said that she had important information regarding the Meralco case." The unidentified caller told Atty. Elamparo that "a TRO was already being prepared and that certain Meralco lawyers had in fact been talking to Justice Roxas." The caller warned Atty. Elamparo against Justice Roxas who had "administrative cases and was 'very notorious,'" but when prodded, the caller would not disclose more details.[15]

At about 1:30 p.m. also on May 30, 2008, Justice Sabio received a telephone call in his chambers from his older brother, Chairman Camilo Sabio (Chairman Sabio) of the Presidential Commission on Good Government (PCGG).[16] Chairman Sabio informed his brother that he (Justice Sabio) had been named the "third member" of the division to which the MERALCO-GSIS case had been raffled. Justice Sabio was surprised as he

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[11] *Rollo* of CA-G.R. SP No. 103692, p. 213.

[12] *Rollo* of CA-G.R. SP No. 103692, p. 212.

[13] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 2.

[14] *Rollo* of CA-G.R. SP No. 103692, p. 211.

[15] Affidavit dated August 19, 2008 of Atty. Elamparo, pars. 8-9.

[16] Affidavit dated August 7, 2008 of Justice Sabio, par. 2, as corrected by his testimony (TSN), August 26, 2008, pp. 158-161.

had not yet been "officially informed" about the matter. Chairman Sabio likewise informed him that a TRO had been prepared. Chairman Sabio then tried to convince Justice Sabio "of the rightness of the stand of the GSIS and the SEC," and asked his brother to help the GSIS, which "represents the interest of the poor people." Justice Sabio told his brother that he would "vote according to [his] conscience" and that the most that he could do was "to have the issuance of the TRO and the injunctive relief scheduled for oral arguments," at which the respondents "must be able to convince" him that the TRO indeed had no legal basis.

In his signed testimony,[17] which he read before the Panel of Investigators, Chairman Sabio narrated the circumstances of this call to his brother on May 30, 2008. It appears to have been prompted by a call from a member of the Board of Trustees of GSIS. To quote from Chairman Sabio's testimony:

> Last May 30, 2008 I was in Davao City Airport with my wife, Marlene, waiting for our 1:25 P.M. PAL flight to Manila. xxx xxx xxx.
>
> As we were boarding, I received a call from Atty. Jesus I. Santos, a Member of the Board of Trustees of GSIS. We had known each other and had become friends since before Martial Law because as Chief Counsel of the Federation of Free Farmers (FFF) we were opposing counsel in various cases in Bulacan.
>
> Attorney Santos informed me that the dispute between the GSIS and MERALCO was now in the Court of Appeals; and, that as a matter of fact, my brother, Justice Sabio, was chair of the Division to which the case had been assigned. Being a Trustee, Attorney Santos requested me to help. I readily welcomed the request for help and thanked him. There was no mystery about his having known of the results of the raffle because the lawyers are notified thereof and are present thereat. As a Trustee, Attorney Santos should be concerned and involved. As such it is his duty to seek assistance for the GSIS where he could legitimately find it. He was right in seeking my assistance.
>
> I was aware of the controversy between the GSIS and MERALCO. In essence this was in fact a controversy between the long suffering

[17] *Rollo* of A.M. No. 08-8-11-CA, p. 605.

public and the mighty – financially and politically – controlling owners of MERALCO. MERALCO is not only a public utility but also a monopoly. Fortunately, GSIS had taken up the cudgels for the long suffering public, who are at the mercy of MERALCO.

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Immediately, I tried to contact Justice Sabio. But due to the noise I could not hear him. So I waited until we would arrive in Manila.

As we were leaving the Airport, I again got in touch with Justice Sabio. After, he confirmed that he was in fact in the Division to which the petition of MERALCO had been raffled. I impressed upon him the character and essence of the controversy. I asked him to help GSIS if the legal situation permitted. He said he would decide according to his conscience. I said: of course.

x x x x x x x x x.

On the same day, May 30, 2008, GSIS filed an urgent *ex-parte* motion to inhibit Justice Roxas from CA-G.R. No. SP 103692.[18] The Special Cases Section of the Court of Appeals received a copy of the motion at 11:58 a.m.[19]

Claiming that the TRO was issued "to pre-empt the hearing" scheduled in the afternoon of that day before the SEC, the GSIS Law Office, through Atty. Marcial C. Pimentel, Jr., set forth its reason for the motion for inhibition as follows:

3. Unfortunately, reports have reached respondent GSIS that the Honorable ponente has been in contact with certain lawyers of MERALCO and has in fact already prepared a draft resolution granting the TRO without affording respondents even a summary hearing. The records of this case was (sic), per information, immediately transmitted to the Honorable *ponente* upon his instructions. The worries of the respondent were exacerbated when it learned that there are supposedly two administrative cases pending against the Honorable *ponente*, both of which involve allegations of bias and prejudice.

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[18] Affidavit dated August 19, 2008 of Atty. Elamparo, par. 12.

[19] *Rollo* of CA-G.R. SP No. 103692, p. 220.

It turned out, however, that at that time, Justice Roxas had not yet been officially notified by the Raffle Committee that the case was raffled to him.[20] Moreover, contrary to the allegation of Atty. Elamparo that the raffle was rigged, Justice Roxas had no hand in the raffle proceeding, which was handled by the Division chaired by Justice Mariano del Castillo with the use of a "fool-proof Las Vegas tambiolo, like the lotto machine."[21]

Justice Roxas brought to the office of Justice Sabio, for the latter's signature, the TRO which he had prepared, already signed by himself and Justice Dimaranan-Vidal. Convinced of the urgency of the TRO, Justice Sabio signed it on condition that the case will be set for oral arguments.

Thus, at 2:08 p.m. on May 30, 2008,[22] the Special Ninth Division composed of Justices Sabio, Roxas, and Dimaranan-Vidal, issued the Resolution granting the TRO prayed for by the petitioners and directing the respondents to file their respective comments (not a motion to dismiss) to the petition within ten days from notice, with the petitioners given five days from receipt of that comment within which to file their reply. The Special Ninth Division also set the hearing on the application for the issuance of a writ of preliminary injunction for 10:00 a.m. on June 23 and 24, 2008. In the same Resolution, parties were directed to file their respective memorandum of authorities in connection with the application for a writ of preliminary injunction together with their comments/reply. After the parties had filed their memorandum of authorities relative to the application for a writ of preliminary injunction, the prayer for the said writ would be considered submitted for resolution "forty five (45) days from promulgation of this Resolution." The SEC received a copy of the Resolution at 4:03 p.m. on that day.[23]

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[20] Affidavit dated August 7, 2008 of Justice Roxas, p. 3.

[21] Affidavit dated August 7, 2008 of Justice Roxas, p. 4.

[22] *Rollo* of CA-G.R. SP No. 103692, p. 216.

[23] Delivery receipt attached to the dorsal side of the notice of resolution, *Rollo* of CA-G.R. SP No. 103692, p. 215.

For Justice Roxas, the issuance of the TRO was an implied denial of the motion for inhibition filed against him. There was no need to put in writing the action on the motion for inhibition.[24]

At 3:00 p.m., the Special Cases Section of the Court of Appeals received the Urgent Motion to Lift Temporary Restraining Order and To Hold Its Enforcement in Abeyance filed by the GSIS.[25] Justice Roxas did not act on the Urgent Motion because he did not consider it meritorious.[26]

On May 31, 2008, Justice Sabio received a cellular phone call from Mr. Francis De Borja (Mr. De Borja), a person he had lost contact with for almost a year already. [27] Mr. De Borja greeted him with: *"Mabuhay ka, Justice."* When Justice Sabio, Jr. asked Mr. De Borja why he said that, Mr. De Borja told him that the Makati Business Club was happy with his having signed the TRO, to which Justice Sabio retorted, "I voted according to my conscience."

On June 5, 2008, the GSIS Law Office received a letter dated June 2, 2008 of Presiding Justice Vasquez, Jr. informing GSIS Chief Legal Counsel, Atty. Elamparo, that the Court of Appeals could not grant her request for the re-raffling of CA-G.R. SP No. 103692 "in the presence of the parties in the interest of transparency and fairness," as the case had been raffled in accordance with the procedure under the IRCA. [28]

On June 10, 2008, Justice B. L. Reyes reported back to work.[29]

On June 11, 2008, at 3:50 p.m.,[30] the Office of the Solicitor General (OSG), appearing for the SEC, filed a manifestation

[24] TSN August 14, 2008 50-64.

[25] *Rollo* of CA-G.R. SP No. 103692, p. 187.

[26] TSN August 14, 2008 74-76.

[27] Affidavit dated August 7, 2008 of Justice Sabio, par. 4.

[28] *Rollo* of A.M. No. 08-8-11-CA, p. 513.

[29] Affidavit dated August 7, 2008 of Justice Reyes, par. 7.

[30] *Rollo* of CA-G.R. SP No. 103692, p. 224.

and motion praying for the admission of the comment (to the petition) attached thereto, as well as the advance and additional copies of the memorandum of authorities.

On June 12, 2008, at 4:53 p.m., the GSIS filed its comment/opposition to the petition in CA-G.R. SP No. 103692,[31] as well as its memorandum of authorities.

On June 16, 2008, the Division Clerk of Court, Atty. Teresita Custodio (Atty. Custodio), delivered to Justice Reyes the *cartilla* of the Meralco case, and informed him that a hearing on the prayer for the issuance of a preliminary injunction had been scheduled at 10:00 a.m. on June 23 and 24, 2008.[32] However, on the same day, the Division Clerk of Court came back to retrieve the *cartilla* upon instructions of Justice Sabio. Justice Reyes instructed his staff to return the *cartilla* and when he asked the Division Clerk of Court why she was retrieving it, she said that Justice Sabio "demanded" that it be returned back to him. "Personally affronted" by the "domineering and superior stance" of Justice Sabio, Justice Reyes "read and re-read Secs. 1, 2(d) & 5, Rule VI (Process of Adjudication)" until he was satisfied that he should sit as Division Chairman in the Meralco case.[33]

On either June 17 or 18, 2008, Justice Sabio requested the *rollo* of CA-G.R. SP No. 103692 from Justice Roxas so that he could study the case before the hearing.[34] Justice Roxas asked him whether Justice Reyes would preside over the hearing. Justice Sabio explained the reason why he, not Justice Reyes, should preside. Justice Roxas promised to instruct the Division Clerk of Court to send the *rollo* over to Justice Sabio. The next day, the Division Clerk of Court told Justice Sabio that the *rollo* was with Justice Reyes. When the *rollo* was eventually transmitted to Justice Sabio, the Division Clerk of Court asked him whether the *rollo* should be with Justice Reyes. Justice Sabio explained why the *rollo* should be with him.

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[31] *Rollo* of CA-G.R. SP No. 103692, Vol. I, p. 335; Vol. II, p. 636.

[32] Affidavit dated August 7, 2008 of Justice Reyes, par. 7.

[33] Affidavit Justice B.L. Reyes, par. 8.

[34] Affidavit of August 7, 2008 of Justice Sabio, Jr., par. 6.

On June 18, 2008, petitioners filed a motion for an extension of five days or until June 23, 2008 within which to file their consolidated memoranda of authorities and reply to the comment of the SEC.[35]

On June 19, 2008, MERALCO filed an *ex-parte* manifestation together with their reply to the comment of the GSIS.[36] Meanwhile, Justice B. L. Reyes asked Atty. Custodio to report on "what transpired between her and Justice Sabio" when she returned the *cartilla*. "Teary-eyed," Atty. Custodio begged off from making a report.[37]

Justice Reyes decided to consult the Presiding Justice "to avoid an ugly confrontation" with the Justices on the "highly politicized case involving giants of the Philippine society." He explained to the Presiding Justice his understanding of the relevant IRCA rules and "the actual practice in similar situations in the past." The Presiding Justice promised to talk with Justice Sabio and, "for the sake of transparency and future reference," Justice Reyes requested permission to write an inquiry on the matter.[38]

On the same day, Justice Reyes wrote Presiding Justice Vasquez a letter[39] calling the attention of Justice Edgardo P. Cruz ("Justice Cruz"), Chairperson of the Committee on Rules, to the "dilemma" as to who between him and Justice Sabio should "receive" CA-G.R. SP No. 103692. Justice Reyes posed these questions before the Presiding Justice:

> Will the case remain with Justice Jose Sabio, Jr. as Acting Chairman of the Special 9th Division and who participated in the initial Resolution of the case?
>
> Will the case revert to the regular 9th Division with the undersigned as Chairman?

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[35] *Rollo* of CA-G.R. SP No. 103692, p. 586.

[36] *Rollo* of CA-G.R. SP No. 103692, Vol. II, pp. 862 & 867.

[37] Affidavit dated August 7, 2008 of Justice Reyes, par. 9.

[38] Affidavit of Justice B.L. Reyes, par. 9.

[39] *Rollo* of A.M. No. 08-8-11-CA, p. 53.

For Justice Reyes, the "dilemma" was engendered by this provision of Section 2 of Rule VI of the IRCA:

> (2) When, in an original action or petition for review, any of these actions or proceedings, namely: (1) giving due course; (2) granting writ of preliminary injunction; (3) granting new trial; and (4) granting execution pending appeal have been taken, the case shall remain with the Justice to whom the case is assigned for study and report and the Justices who participated therein, regardless of their transfer to other Divisions in the same station.

The hearing on the application for preliminary injunction having been scheduled for June 23 and 24, 2008, Justice Reyes considered it "necessary" that the issues be resolved before that date. Moreover, the referral of the controversy to the Presiding Justice would give him sufficient time to seriously study the case before the hearing.[40]

On June 20, 2008, Presiding Justice Vasquez referred the letter of Justice Reyes to Justice Cruz, Chairperson of the Committee on Rules, noting "some urgency involved as the hearing of the case is on Monday, June 23, 2008."[41]

On that same day, Justice Cruz wrote Justice Reyes a letter[42] quoting Section 2 (d), Rule VI of the IRCA and stating that the "[i]ssuance of a TRO is not among the instances where 'the Justices who participated' in the case shall 'remain' therein." Hence, Justice Cruz opined that "[n]otwithstanding the issuance of the TRO (not writ of preliminary injunction), the case reverted to the regular Chairman (Justice Reyes) of the Ninth Division upon his return." Justice Reyes received a copy of the letter of Justice Cruz in the afternoon of that day.[43]

During the hearings of this case, Justice Cruz explained his opinion before the Panel. He opined that the motion to lift the TRO is not a motion for reconsideration because Rule 52 of

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[40] Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 10.

[41] *Rollo* of A.M. No. 08-8-11-CA, p. 53.

[42] *Rollo* of A.M. No. 08-8-11-CA, p. 56.

[43] Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 11.

the Rules of Court states that a motion for reconsideration may be filed with respect to a decision or a final resolution. A TRO is not a final resolution but an interlocutory order. Moreover, since the subject of the hearing on June 23, 2008 was on the application for preliminary injunction, Justice Sabio had no right to participate in the hearing because as an Acting Chairman, his authority was only to act on the motion to lift the TRO. Under the IRCA, the position of Justice Sabio invoked the exception to the general rule in the IRCA. However, the settled principle is to construe a rule strictly against the exception. The participation of Justice Sabio in the hearing on June 23, 2008 was a "passport" to participation in the decision-making process, in violation of the IRCA.[44]

Justice Reyes having consulted with him, the Presiding Justice referred the matter to Justice Sabio who in turn, opined that "a temporary restraining order is part of the injunctive relief or at least its initial action such that he should be the one to chair the Division."[45] In his office after that consultation with the Presiding Justice, Justice Reyes found that the Division Clerk of Court had given him a copy of the *cartilla* just in case he would preside over the hearing. In the evening, the Presiding Justice called up Justice Reyes to inform him that Justice Sabio "insisted that he would preside over the hearing of the case," and that the opinion of Justice Cruz, who was "junior" to Justice Sabio "was no better than his own opinion."[46]

It turned out that, upon receipt of a copy of the letter of Justice Cruz, Justice Sabio told the Presiding Justice by telephone that he disagreed with the opinion of Justice Cruz "because he did not sign in an official capacity as Chairman of the Rules Committee, but in his personal capacity" and hence, the opinion of Justice Sabio "was as good as his, as in fact I (Justice Sabio, Jr.) am even more senior than he."[47] Justice Sabio told the

[44] TSN August 13, 2008 248-259.

[45] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 9.

[46] Affidavit dated August 7, 2008 of Justice Reyes, pars. 12 & 13.

[47] Affidavit dated August 7, 2008 of Justice Sabio, Jr. par. 7; *Rollo* of A.M. No. 08-8-11-CA, p. 74.

Presiding Justice that he "smelled something fishy" about the move to transfer the case to the Ninth Division especially because Justice Reyes did not inform him about it despite the fact that they were seated together on three occasions.

Justice Sabio "smelled something fishy" because a couple or so weeks ago, he attended a Chairpersons' meeting regarding the leakage of the *ponencia* of Justice Bato, with Justice Reyes as Chairperson and Justice Jose Mendoza as senior member. The meeting was called because prior to the promulgation of the decision of Justice Bato, the losing party already filed a motion for the inhibition of the *ponente*. According to Justice Sabio information on the decision could not have been leaked by Justice Bato but by a member of the Division.[48]

The Presiding Justice "did not do anything anymore" to prevent an "unpalatable" situation at the scheduled June 23, 2008 hearing, notwithstanding the "conflicting opinions" of Justices Reyes and Sabio. The "personal view" of the Presiding Justice was at the time "with Justice Cruz" but Justice Sabio had a "different interpretation." Neither did the Presiding Justice suggest that the Rules Committee be convened because the Committee then had only two members. He felt that it would be "better" if Justices Reyes and Sabio "could settle it between themselves." The Presiding Justice was seeing the Justices "practically" everyday because he did not want "these things to blow up." However, neither did it enter the mind of the Presiding Justice that the hearing on June 23 could be reset. Had he known that there was a motion to inhibit Justice Roxas, he would have changed his position "that it should be the Sabio group."[49]

Also on June 20, 2008, the GSIS requested permission to conduct a power-point presentation during the hearing.[50] Likewise the SEC, through the OSG prayed that it be allowed the use of

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[48] Affidavit dated August 7, 2008 of Justice Sabio, Jr., par. 8; *Rollo* of A.M. No. 08-8-11-CA, pp. 74-75.

[49] TSN August 12, 2008 (a.m.) 137-141, 146-147, 153.

[50] *Rollo* of CA-G.R. SP No. 103692, p. 593.

Microsoft Powerpoint Application at the June 23 and 24, 2008 hearings.[51] Justice Roxas did not act on the motions.

On June 21, 2008, Justice Sabio came to know that it was the Division chaired by Justice Reyes that would handle the case on account of the opinion of Justice Cruz.[52]

In the morning of June 23, 2008, Justice Sabio consulted with Justice Martin Villarama, Jr. ("Justice Villarama") who advised him, "in no uncertain terms," that his stand was "correct" and that he should remain in the case.[53] Justice Villarama said that the case should remain with the Special Ninth Division "regardless of the transfer of the *ponente* to the Eighth Division because of the pending motion to lift TRO," which the Special Ninth Division should resolve "following the general rule that when a decision or resolution is rendered by a division, a motion for reconsideration thereof should be acted upon by all the Members of that division, whether regular or special, which participated in the rendition of the decision or resolution, except in case of death, retirement or resignation of such Member."[54]

That morning, Justice Roxas also consulted Justice Villarama. The latter told the former that since there was a motion to lift the TRO, Justice Roxas should first rule on the motion. He also advised Justice Roxas to inhibit himself from the case, as there might be a problem (*mag-inhibit ka baka magka-problema).* Justice Roxas told Justice Villarama that he would follow his "suggestion."[55]

Justice Reyes also went to the office of Justice Villarama to tell him of his "strong conviction that the issuance of a TRO is not among the instances provided in Sec. 2 (d), Rule VI when the case shall remain with those Justices who participated in the case regardless of their transfer to other division(s)." Justice

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[51] *Rollo* of CA-G.R. SP No. 103692, p. 598.

[52] TSN August 11, 2008 44-47.

[53] Affidavit dated August 7, 2008 of Justice Sabio, par. 10.

[54] Affidavit dated August 7, 2008 of Justice Villarama, par. 3.

[55] TSN August 12, 2008 (p.m.) 206-211.

Villarama told Justice Reyes that per his "understanding and interpretation of said provision, x x x the case should remain with the Special Ninth Division."[56]

At 9:50 a.m., the Office of the Division Clerk of Court called Justice Reyes to inform him that the parties and their counsels were already in the hearing room. Justice Reyes informed the caller that he could not preside as Justice Sabio had "apparently hardened his position" and he wanted to avoid an "ugly spectacle." His name plate was displayed in the hearing room but Justice Sabio moved to another hearing room.[57] Allegedly, the removal of the nameplate of Justice Reyes was the talk of the Court of Appeals for weeks.[58]

Villaraza Cruz Marcelo and Angangco entered its appearance as counsel for Meralco.[59] At the hearing, Justice Sabio presided with Justices Roxas and Dimaranan-Vidal in attendance. Justice Roxas, the *ponente*, did not ask a single question.[60] Not one of the Justices in attendance brought up the motion for inhibition filed by the GSIS against Justice Roxas.[61] In open court, the parties in CA-G.R. SP No. 103692 agreed to submit, within 15 days, simultaneous memoranda on the injunctive relief prayed for by the petitioners, after which the application for preliminary injunction would be deemed submitted for resolution.[62]

On June 25, 2008, or about two days after the separate conversations of Justice Villarama with Justices Sabio and Reyes, the Presiding Justice also consulted Justice Villarama about the letter-queries of Justices Roxas and Reyes on which Division

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[56] Affidavit dated August 7, 2008 of Justice Villarama, par. 5.

[57] Affidavit dated August 7, 2008 of Justice Reyes, par. 14.

[58] Affidavit dated August 7, 2008 of Justice Roxas, p. 5.

[59] *Rollo* of CA-G.R. SP No. 103692, Vol. II, p. 977.

[60] Affidavit dated August 7, 2008 of Justice Sabio, par. 11; *Rollo* of A.M. No. 08-8-11-CA, p. 75; TSN of CA-G.R. SP No. 103692, June 23, 2008.

[61] TSN August 8, 2008 100-101.

[62] TSN of CA-G.R. SP No. 103692, June 23, 2008, pp. 169-170.

should resolve "the matter of injunctive relief or issue the decision" in CA-G.R. SP No. 103692.[63]

The Presiding Justice issued Office Order No. 196-08-CMV reconstituting the Committee on Rules and designating Justice Cruz as the Chairperson, with Justices Rebecca De Guia-Salvador, Reyes, Hakim Abdulwahid, and Noel G. Tijam, as members.[64] The Committee on Rules was tasked to propose amendments to the IRCA on or before August 15, 2008 "for submission and adoption of the Court *en banc*." (The office order was later amended by Office Order No. 196-08-CMV on August 4, 2008 to include as members Justices Mario L. Guariña III, Lucas P. Bersamin, and Teresita Dy-Liacco Flores.[65]) The Rules Committee used to be composed of only three members, namely: Justices Cruz, Abdulwahid, and Roberto Barrios, now deceased, as members, with Justice Cruz as chairperson.[66]

It was also on June 25, 2008 that Presiding Justice Vasquez issued Office Order No. 200-08-CMV stating that, in view of the retirement of Justices Enrique Lanzanas, Lucenito N. Tagle, Agustin S. Dizon, and Rodrigo Cosico, and the appointments of Justices Ruben C. Ayson and Edgardo L. delos Santos, the Divisions would have a new composition effective July 4, 2008.[67] Under that office order, Justice Sabio became the Chairman of the Sixth Division, with Justice Dimaranan-Vidal as a member. Justice Reyes became the Chairman of the Eighth Division, with Justices Roxas and Apolinario D. Bruselas, Jr. ("Justice Bruselas") as members.

On June 29, 2008, Justice Reyes went on official leave of absence to use a business class airplane ticket to Sydney, Australia that he had won in an APT Golf Tournament in January 2008.

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[63] Affidavit of August 7, 2008 of Justice Villarama, Jr., par. 6.

[64] *Rollo* of A.M. No. 08-8-11-CA, p. 474.

[65] *Rollo* of A.M. No. 08-8-11-CA, p. 475.

[66] TSN August 8, 2008 230, 225.

[67] *Rollo* of A.M. No. 08-8-11-CA, p. 275.

He was still on official leave when the reorganization of the Court of Appeals took place on July 4, 2008.[68]

On July 1, 2008, Justice Roxas told Justice Sabio that he did not attend the *Access to Courts* (sic) summit on June 30 and July 1, 2008 at the Court of Appeals Auditorium because he was busy with the Meralco case. Justice Sabio was taken aback because at that time the parties had not yet submitted their memoranda.[69]

That same afternoon, Mr. De Borja again called up Justice Sabio, seeking to meet with him for an "important" matter. Because Justice Sabio had 6-8 p.m. classes at the Ateneo Law School, they agreed to meet after his classes but not for long because his wife and his daughter, Atty. Silvia Jo Sabio who is an Attorney VI in the Office of the Chief Justice,[70] would be waiting for him.[71] According to Justice Sabio, the conversation at that meeting with Francis de Borja went as follows:

17. By the time my class was finished at 8 pm, Mr. De Borja was already waiting for me at the Lobby Lounge of the 3rd Floor of the Ateneo Law School. His first words to me were: *Alam mo Justice kung sino ang kasama ko sa kotse? Si Manolo Lopez.* Then he said: *Noong tinatawagan kita at sinabi kong "Mabuhay ka Justice," si Manolo Lopez ang katabi ko noon. Nasa Amerika siya, kaya ako na lang ang pumunta dito para makiusap sa 'yo. Alam mo, itong kaso na ito is a matter of life and death for the Lopezes. And alam mo naman what the Marcoses did to them, which is being done now by the Arroyos.*

- At that point he mentioned the impasse between Justice Bienvenido Reyes and myself. He said: *Alam naming may problema kayo ni Justice Reyes tungkol sa chairmanship.*

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[68] Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 15.

[69] Affidavit dated August 7, 2008 of Justice Sabio; par. 14; *Rollo* of A.M. No. 08-8-11- CA, p. 75.

[70] TSN August 8, 2008 185.

[71] Affidavit dated August 7, 2008 of Justice Sabio, par. 15; *Rollo* of A.M. No. 08-8-11-CA, p. 75.

- I was surprised how he came to know about it, as this was an internal matter of the Court of Appeals which only happened fairly recently and many associate justices of the CA were not even aware of this. Just the same, I explained my stand and why I could not relinquish the chairmanship to Justice Reyes.
- He then replied: *Alam mo, Justice ang opinion dito ni Nonong Cruz ay i-challenge ang stand mo. Kaya lang, mayroon namang nagsabi na it might become messy.*
- Then he bragged to me: *Ako din ang responsible sa pag-recommend at pag-hire ng Villaraza Law Firm.*
- Then he explained that he was there to offer me a win-win situation.
- He said: *Justice, mayroon kaming ₱10 million. Ready.* Just give way to Justice Reyes.
- Then I said: *Bakit ganun. Nakasisiguro sila sa kanya, sa akin hindi?*
- He said: *Mas komportable lang sila sa kanya.*
- At that point, I was shocked that he had a very low regard for me. He was treating me like there was a price on my person. I could not describe my feelings. I was stunned. But at the same time, *hindi ko rin magawang bastusin siya* because I had known him since 1993 and this was the first time that he had ever treated me like this, or shown that he believed I could be bought.
- So I just told him: *Francis, I cannot in conscience agree to that.*
- His answer was: *Sabi ko nga sa kanila, mahirap ka talaga papayag. Kasi may anak iyang Opus Dei. Numerary pa.*
- At this point, I just wanted to leave, so I told him I could not stay long. I told him my wife and lawyer daughter were waiting.
- Even then, he was already insistent. His parting words before I left were: *Just think about it, Justice.*[72]

[72] *Id.*, par. 17; *Rollo* of A.M. No. 08-8-11-CA, pp. 76-77.

At that time, Mr. De Borja was carrying a "sealed" brown paper bag, which he was handling "as if something important" was inside. However, Justice Sabio did not know if the bag contained ₱10 million.[73] In his car, Justice Sabio told his wife and his daughter, Silvia Jo, about the offer of Mr. De Borja for Meralco.[74]

In his affidavit submitted to the Panel of Investigators, Mr. De Borja describes himself as a businessman, a deal maker, and project packager. On July 1, 2008, he invited Justice Sabio for dinner "to touch base" and for *chismis* about the MERALCO-GSIS case. As the latter would have evening classes at the Ateneo Law School, and his wife and daughter would be waiting in their car after his classes, they just agreed to meet at the lobby-lounge of the School. What Mr. De Borja knew about the MERALCO case allegedly came from news reports but he was interested in the news because he is a "confirmed free-enterpriser." Moreover, De Borja thought that there was "[n]othing like hearing things directly from the horse's mouth."[75]

When Mr. De Borja and Justice Sabio met, Mr. De Borja averred he was indeed carrying a bag, not an expensive looking luggage. After parking his car at the Rockwell basement, he took the escalator, intending to walk out of the mall. On his way, he passed by the Kenneth Cole shop and, since it was still early, he looked in and saw a T-shirt he liked. He bought the T-shirt, which he brought before the Panel of Investigators in the grey "Kenneth Cole Reaction" bag. The photographs of the bag and the T-shirt costing ₱1,650.00 are marked Exhibits "A-De Borja" and "A-1-De Borja" and attached to the *rollo* of A.M. No. 08-8-11-CA, while the photograph of the receipt issued by the Kenneth Cole Boutique, marked as Exhibit "A-2-De Borja," shows that the purchase was made on July 1, 2008 at 19:47. He stressed the bag did not contain ₱10 million.

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[73] TSN August 11, 2008 95-96, 160-162.

[74] Affidavit dated August 7, 2008 of Silvia Jo G. Sabio; *Rollo* of A.M. No. 08-8-11-CA, pp. 83-84.

[75] Affidavit dated July 31, 2008 of Mr. De Borja.

Before the Panel, Justice Sabio claimed that the bag Mr. De Borja brought during the hearing was not the bag that Mr. De Borja was carrying when Justice Sabio saw him on July 1, 2008. What Mr. De Borja allegedly brought with him to the lobby-lounge of the Ateneo Law School was a brown bag with paper handle "about 2/3 (of the Kenneth Cole bag) in size." Justice Sabio was told by the Panel that it could be the subject of rebuttal evidence but he did not present such evidence.

According to Mr. De Borja, Manolo Lopez (Mr. Lopez), the owner of MERALCO whose wife was a member of Martha's Vineyard just like Mr. De Borja's wife, was also an acquaintance of Mr. De Borja at the Ateneo grade school. Mr. Lopez did not ask him (Mr. De Borja) to contact Justice Sabio. At a party where Mr. De Borja met Mr. Lopez, Mr. De Borja informed him that he knew Justice Sabio but Mr. Lopez did not say anything.

Mr. De Borja denied having offered ₱10 million to Justice Sabio. Instead, he claimed that Justice Sabio informed him that the government has offered him (Justice Sabio) money and a promotion to the Supreme Court to favor GSIS. When Mr. De Borja asked what would it take for Justice Sabio to resist the government's offer, Justice Sabio allegedly replied: "Fifty Million."[76] He alleged that it was Justice Sabio who called up after that July 1, 2008 meeting to "feel" his reaction to the "₱50 million solicitation." Justice Sabio asked him: "*O, ano, kumusta, ano ang nangyayari*."

Mr. De Borja admitted having given ₱300,000 to Justice Sabio, some 15 years ago, as a *balato* because he came to value the friendship of Justice Sabio that developed while the latter was helping the Roa family in a business transaction. Mr. De Borja earned "more than ₱25 million" although he received only ₱3 million as down payment out of the sale of 100 hectares of the Roa property. He gave the *balato* of 10% of the ₱3 million to Justice Sabio in cash at the Roa-owned bank in Cagayan de Oro. Since the Roas had a lot of "legal problems," Justice

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[76] Affidavit dated July 31, 2008 of Mr. De Borja, pars. 16, 19-20.

Sabio rendered advice and consultation at the time that he was an RTC judge in Cagayan de Oro. After the promotion of Justice Sabio to the Court of Appeals, Mr. De Borja invited him for dinner. They would see each other at get-togethers of the Roas with whom Mr. De Borja is related, even at a gathering in the house of Mr. De Borja's mother.[77]

On July 2, 2008, Justice Sabio that (sic) informed Presiding Justice Vasquez that he (Justice Sabio) was offered a bribe (which he rejected) to have him ousted from the Meralco case. The news allegedly shocked the Presiding Justice. Justice Sabio also went to Justice Villarama who was both "shocked and amused." Justice Sabio did not tell them who the "offeror" was. However, a day or two later, Justice Sabio found out that Mr. De Borja had called their mutual friend, Mrs. Evelyn Clavano, who was also shocked that Mr. De Borja had "the gall to ask her" to convince Justice Sabio to accept the bribe.[78]

Although Justice Sabio told the Presiding Justice that the offer of ₱10 million to a Justice was, in the words of Justice Sabio, *bastusan na ito*, and he knew that bribing a Justice is a criminal act, the Presiding Justice did nothing because he could not "advise a fellow Justice on what to do" — the Justice would know what he should do. Neither did he think of consulting Justices Roxas and Dimaranan-Vidal on the chairmanship impasse.[79]

On July 3, 2008, to stop Mr. De Borja from pestering him with phone calls and text messages, Justice Sabio called up Mr. De Borja who told him: *Mabuti naman Justice tumawag ka, kasi malapit na ang deadline ng submission ng memorandum. Pinag-isipan mo bang mabuti ang offer namin? Kasi sayang din kung di mo tatanggapin, Kasi kahit aabot itong kaso sa Supreme Court, matatalo ka din. Sayang lang 'yung ₱10 million. Baka sisihin ka pa ng mga anak mo.* Shocked by what he heard, Justice Sabio said "No." Since Mr. De Borja did not

[77] TSN August 20, 2008 259-588.

[78] Affidavit dated August 7, 2008 of Justice Sabio, Jr., pars. 19-21.

[79] TSN August 12, 2008 (a.m.) 158-163, 178-180.

seem to understand why he kept saying "No," Justice Sabio explained to him: *If I accept that, my conscience will bother me forever. How can I face my wife and two daughters? One a lawyer and the other a Numerary member of Opus Dei? And besides, how can I reconcile my being a member of PHILJA's Ethics and Judicial Conduct Department; being a lecturer of the MCLE; and being a pre-bar reviewer of the Ateneo Law School on Legal and Judicial Ethics?* Mr. De Borja retorted: *Wala naman kaming pinapagawa sa iyo na illegal, eh.* Then he added: *You know Justice, after two or three weeks, makakalimutan na ito ng mga tao. Meron naman diyang mga Atenista na tumatanggap.* Justice Sabio said: *I don't know about them, but I am different.* Mr. De Borja then said: *Well, if you will not accept, we will be forced to look for other ways.* To this, Justice Sabio said: *But they will have to contend with me.* In parting, Mr. De Borja said: *Justice, no matter what, saludo talaga ako sa iyo.*

Mr. De Borja admitted that Justice Sabio called him up, but denied the above conversation with Justice Sabio.

On July 4, 2008, the reorganization of the Court of Appeals became effective and brought Justices Reyes, Roxas and Bruselas to the Eighth Division. Justice Reyes went to see the Presiding Justice about the urgent motion for him to assume the chairmanship of the Division, which shows on its face that the Urgent Motion dated July 10, 2008 was received by the Court of Appeals at 2:08 p.m. on July 10, 2008 and by Atty. Teresita C. Custodio on July 9, 2008. Justice Reyes expressed to the Presiding Justice his apprehension that should he fail to assume the chairmanship, he would face administrative liability for nonfeasance or dereliction of duty. The Presiding Justice suggested that the respondents in the case be required to comment on the Urgent Motion "in a resolution to be issued by the former 9th Division of Justice J.L. Sabio, Jr. since to allow the new Division of Justice B.L. Reyes to issue the resolution x x x would render moot and academic" the same motion. Justice Reyes agreed and told the Presiding Justice that he would be sending over the records to him so that the Presiding Justice could place a note thereon as

to what had been agreed upon. However, the records of the case did not reach the Presiding Justice.[80]

For Justice Roxas, the July 4, 2008 reorganization was mandatory and the Meralco case followed him as its *ponente* to the Eighth Division. By the reorganization, Justice Sabio was moved from the disbanded Special Ninth Division to the Sixth Division, as the reorganization did not spare any Justice.[81] Moreover, the IRCA does not require that the Justices that issued a TRO be the same Justices that will render the decision.[82] This is because the TRO does not appear in Section 2 (d), Rule VII of the IRCA. Accordingly, only the issuance of a preliminary injunction could be an exception to the July 4, 2008 reorganization of the CA.[83] He believes the IRCA does not require that the Justices who heard the case should also decide it because the CA is a court of record and Justices may rely on the transcript of stenographic notes.[84] And so, once the three Justices have signed the decision, the *ponente* has the "pressing duty" to promulgate the decision.[85]

Since July 4, 2008, Justice Bruselas alleged that he acted "on all the *ponencias*" of Justices Reyes and Roxas, "just as they had acted" on his *ponencias.*[86]

On July 7, 2008, the GSIS filed its memorandum.

On or about July 8, 2008, Atty. Silvia Sabio, to help her father, sought the advice of Atty. Jose Midas Marquez ("Atty. Marquez") regarding the bribery attempt. Atty. Marquez advised that Justice Sabio should write the Chief Justice about the incident, detailing not only the bribery attempt but all that has transpired

[80] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, pars. 12 & 13.

[81] Affidavit dated August 7, 2008 of Justice Roxas, p. 7.

[82] Affidavit dated August 7, 2008 of Justice Roxas, p. 8.

[83] Affidavit dated August 7, 2008 of Justice Roxas, p. 8.

[84] Affidavit dated August 7, 2008 of Justice Roxas, p. 9.

[85] Affidavit dated August 7, 2008 of Justice Roxas, p. 10.

[86] Affidavit dated August 7, 2008 of Justice Bruselas, par. 5.

relative to the chairmanship issue. Atty. Silvia Sabio immediately called her father and relayed Atty. Marquez's advice. Later that date, Justice Sabio handed his daughter, Silvia, a handwritten letter for her to deliver to the Chief Justice.[87] The handwritten letter, in essence, requested permission for Justice Sabio to "unburden" himself before the Chief Justice on the Meralco case.[88]

At around 2:30 p.m., Justice Reyes went to see Justice Sabio. The conversation between them, as recalled by Justice Sabio, was as follows:

- As soon as he came in, I said: "*Why did you stab me behind my back?*" He said, "*Why, what did I do?* I asked him *Why is it that you have to resort to that strategy of seeking the opinion of Ed Cruz, in his personal capacity, when we could have discussed the matter with the PJ?*
- I reminded him that we were seated three times near each other on different occasions only recently and he never mentioned to me about the plan to oust me.
- He said: Perhaps that was my fault. I should have talked to you.
- I told him, that *all the while I thought we were friends. Why did you have to do these things behind my back and not discuss the matter with me face to face?*
- Then he said it just came about due to the urgent motion; that he was afraid Meralco would take action against him for nonfeasance for not doing his job.
- It was then that I said: *Are you aware that I was offered 10M for me to give way to you?*
- I further asked him the following: *In the first place, how was the Meralco emissary able to know that there was an impasse between you and me when that was supposed to be an internal matter?*

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[87] Affidavit dated August 7, 2008 of Atty. Silvia Jo Sabio, pars. 5-8.

[88] Affidavit dated August 7, 2008 of Justice Sabio, pars. 28-29; TSN August 12, 2008 (a.m.) 71-72.

- *If you will now insist on assuming the chairmanship after I told you of the 10Million offer, what will I think of you?*
- *Are you a Trojan horse? Can you blame me if I think you are part of this whole scheme or shenanigan?*
- *Does not the timing alone stink of corruption? After they failed to convince me of their offer, now they will use you to oust me? Is it because they are certain of your loyalty and they are uncertain with mine?*
- *And why did they file this stupid urgent motion to assume? In my nine years in this court, I have never seen such an animal as this. This is a cowardly act, and whoever advised this stupid motion is also stupid. Why do you have to dignify such a foolish motion? They should file a motion for me to inhibit or recuse myself.*
- *Why is it that Meralco actively participated in the hearing on the 23rd and never raised any question on the alleged irregularity of my having presided over the hearing?*
- *Why do you insist on assuming the case? Are you not aware that several days after the issuance of the TRO, respondents filed a motion for inhibition of Justice Vicente Roxas and a motion to lift the TRO. Who then had the right to resolve such motion?*
- *Under the circumstances, anong iisipin ko sa yo? Ano ang tingin ko ngayon sa iyo?*

· His feeble answer was: you. He then said he did not know of those pending motions. (Incidentally, these motions were never resolved.) He also said, *wala talaga akong interest dito kundi ayaw ko lang ma charge ng non-feasance for failing to do my duty.*

· I answered him: *Malayo yung non-feasance. Hindi ito nonfeasance. I taught the subject for many years and this is not one of them.*

· So I told him, I have made my decision on the matter. *Bahala ka na.* Then I stood up to show him to the door. He was silent after that and before he left, he put his arm around me.

For his part, Justice Reyes kept on repeating: "*Wala talaga ako dito, wala akong interest kung di yun lang hindi ako ma non-feasance.* Justice Sabio thought otherwise.

Meanwhile, Justice Roxas brought to the office of Justice Dimaranan-Vidal "the final decision on the MERALCO case" bearing his signature, which he gave to Justice Dimaranan-Vidal for "concurrence/dissent." According to Justice Dimaranan-Vidal, Justice Roxas explained to her the "rationale for his conclusion." Justice Roxas went out for a while and returned "with an expensive looking travelling bag" from where he pulled out the "purported final decision." Before the close of office hours, Justice Roxas returned to the chambers of Justice Dimaranan-Vidal to check if he (Justice Roxas) had signed his decision. When she replied that yes, he had signed it, Justice Roxas said he would pick it up the next day.[89]

Justice Dimaranan-Vidal signed the decision notwithstanding that on July 8, 2008 the Court of Appeals had been reorganized because she believed that the Special Ninth Division was still existing on account of its having issued the TRO.[90] She also concurred with the portion of the decision recommending administrative sanctions against the GSIS lawyers because she believed the OSG or the OGCC should have appeared for the GSIS.[91]

Also late that day, Justice Villarama told Justice Sabio that he had advised Justice Reyes to "lay off the case" and allow Justice Sabio "to continue" and to resolve the urgent motion for Justice Reyes to assume the chairmanship. Justice Villarama recalled that Justice Reyes repeatedly said: "*Wala talaga ako dito Jun, Wala akong personal interest dito.*"

After "a careful and judicious study" of the more than 56-page decision of Justice Roxas, Justice Dimaranan-Vidal signed it. True to his word, Justice Roxas personally picked up the

[89] Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, pars. 4 & 5.

[90] TSN August 8, 2008 89-91.

[91] TSN August 8, 2008 129-135.

decision that day "purportedly for the action of the Acting Chairman, Justice Sabio," who was then on leave of absence until July 11, 2008.[92] Notwithstanding the fact that the parties had not submitted their respective memoranda, Justice Dimaranan-Vidal signed the "convincing" *ponencia,* including three copies of the signature page, because Justice Roxas was insistent of the urgency of the signing of the decision due to the impending lapse of the TRO on July 29, 2008.[93] Justice Sabio thought otherwise.[94]

However, Justice Roxas denied that the decision he gave to Justice Dimaranan-Vidal was the final decision. He denied that he gave it to her for her signature. He said it was only for her to read because she asked to read it. He said it was a mere draft as "everything was unofficial" — there was no *rollo* or logbook with it, it was not placed in an envelope, and it did not have the "special seal" of Justice Roxas. It allegedly "was thrown in the garbage can."

On July 9, 2008, the OSG filed the memorandum for the SEC.

On July 10, 2008, Meralco filed an urgent motion praying that Justice Reyes assume the chairmanship of the Division,[95] alleging the reasons for the urgent motion as follows:

5. At the scheduled oral arguments on 23 June 2008 in the instant case, the parties were first directed to one of the Hearing Rooms of the Court of Appeals. At the said room, the name plate of Justice Reyes was already placed on the table for the justices. Thus, petitioners were of the impression that the leave of absence of Justice Reyes was over and that he would be presiding over the oral arguments as Chairman of the Ninth Division of the Honorable Court.

6. However, when the parties were directed to transfer to another Room of the Court of Appeals for the oral arguments in the instant case, petitioners saw that the name plates on the table for the justices

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92 Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 9.

93 TSN August 8, 2008 105-107, 112, 116, 119.

94 TSN August 8, 2008 218-219.

95 *Rollo* of CA-G.R. SP No. 103692, Vol. II, p. 1262.

included that of Justice Sabio, Jr., together with that (sic) of Justices Roxas and Dimaranan-Vidal. Thereafter, Justice Sabio presided over the oral arguments as Chairman of the Special Ninth Division of the Honorable Court. Petitioners were, thus, of the impression that the regular Chairman of the Ninth Division, Justice Reyes, was still on temporary leave of absence.

7. Subsequently, it has come to the attention of the petitioners that Justice Reyes has already returned from his temporary leave of absence and has resumed his duties as Chairman of the Ninth Division of the Honorable Court.

8. Under the Internal Rules of the Court of Appeals, Justice Sabio, Jr. should now refrain from acting as the chairman of the Division hearing the instant case as he is already disqualified from acting as such upon the return of Justice Reyes.

8.1. With due respect, Justice Reyes cannot shirk from his bounden judicial responsibility of performing his duties and functions as Chairman of the Ninth Division of the Honorable Court.

8.2. Specifically, under Section 3 (d), Rule IV of the 2002 Internal Rules of the Court of Appeals, a case can remain with the justices who participated therein only when any of the following actions have been taken: (a) giving due course; (b) granting of a writ of preliminary injunction; (c) granting of a new trial; or (d) granting of execution pending appeal:

x x x x x x x x x.

9. None of the foregoing instances apply with respect to Justice Sabio, Jr.'s continuing hold on the case. Although Justice Sabio, Jr. was one of the Justices who issued the temporary restraining order in favour of the petitioners in the instant case, this circumstance is not among the grounds as above-quoted, when a justice of the Court of Appeals may remain in the Division.

10. As above-quoted, the rule is categorical that it is not the grant of a temporary restraining order but rather the grant of a writ of preliminary injunction that sanctions a justice's remaining with the Division. Thus, the continued participation of Justice Sabio, Jr., in the instant case, considering the clear Rules of the Honorable Court, is not only irregular but may lead one to conclude that he is exhibiting undue interest in the instant case.

On this day, Justice Reyes reported back to work after his trip to Australia.[96]

On July 11, 2008, Justice Sabio was on leave when Justice Roxas called him up for a meeting to discuss the case. Justice Sabio told him that he needed ample time to read the memoranda of the parties. Justice Roxas promised to send to Justice Sabio the memoranda immediately.[97]

At 4:00 p.m., Justice Reyes received from the Eighth Division Clerk of Court a copy of Meralco's Urgent Motion for him to assume the chairmanship of the Ninth Division.

On Monday, July 14, 2008 at the flag ceremony, Justice Sabio requested Justice Roxas to meet with him as he had by then read the memoranda of the parties. Justice Roxas initially agreed to the meeting but he later informed Justice Sabio that he had another matter to attend to; neither was he available in the afternoon. Justice Roxas had become scarce. Justice Sabio learned that Justice Dimaranan-Vidal was also looking for Justice Roxas.[98]

Justice Sabio prepared a resolution on the motion for the reconsideration of the TRO and informed Justices Roxas and Dimaranan-Vidal that he wanted to discuss it with them. The resolution he prepared "never saw light."[99]

At 10 a.m., Justice Roxas, with his messenger, brought the *rollo* of CA G.R. SP No. 103692 to Justice Reyes, and told the latter that he and Justice Bruselas would be coming over to deliberate on the case. Ten minutes later, the Eighth Division deliberated on the case.[100] After a cursory examination of the *rollo*, Justice Reyes found that the decision had been signed by Justices Roxas and Bruselas but Justice Reyes asked for more time to study the case.[101]

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96 Affidavit dated August 7, 2008 of Justice Reyes, par. 17.

97 Affidavit dated August 7, 2008 of Justice Sabio, par. 36.

98 Affidavit of August 7, 2008 of Justice Sabio, Jr., par. 37.

99 TSN August 11, 2008 176-179.

100 Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 19.

101 Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 20-21.

A transcript of the "Final Deliberation" on July 14, 2008 is attached to page 1926 of Volume III of the *rollo* of CA-G.R. SP No. 103692 and marked as Exh. 2- Roxas on page 279 of the *rollo* of A.M. No. 08-8-11-CA. According to Justice Roxas, it was he who prepared the transcript from memory to "lend credence" to the certification of Justice Reyes at the end of the decision pursuant to Article VIII, Section 13 of the Constitution.[102] Justice Reyes denied having seen it or having authorized its transcription. Justice Bruselas did not sign any transcript of the deliberation as he was not aware that a transcript was being taken. There was no stenographer present, as only the three of them, Justices Reyes, Roxas, and Bruselas were present at the deliberation. Neither was there a recording machine. Justice Roxas admittedly prepared the transcript "from memory."[103]

The statement attributed to Justice Reyes in the transcript that there were "previous deliberations" were "really meetings," which they had twice, in the office of Justice Reyes, according to Justice Roxas.[104]

On July 15, 2008, when she felt that the timing was right, Atty. Silvia Sabio testified that she handed her father's letter to the Chief Justice through his private secretary, Ms. Jasmin Mateo.[105] A few days later, however, Presiding Justice Vasquez told Justice Sabio that the Chief Justice would no longer meet with him, as the Presiding Justice had apprised the Chief Justice about the matter.[106]

According to Justice Reyes, at 2:00 p.m. that day, the Office of the Presiding Justice informed him that Justice Sabio was waiting for him in his office. As soon as Justice Reyes was seated, Justice Sabio "berated" him and accused him of "orchestrating matters." Justice Sabio told him that an emissary

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[102] TSN August 14, 2008 99-105.

[103] TSN August 13, 2008 403-405, 419.

[104] TSN August 14, 2008 113-121.

[105] Affidavit dated August 7, 2008 of Atty. Silvia Jo Sabio, par. 9.

[106] TSN August 12, 2008 (a.m.) 174-176.

of MERALCO had offered him ₱10 million to drop off the case, hence, he asked that if he was offered that much, how much could have been offered "to the principals?"[107]

On July 17, 2008, Justice Reyes went back to the office of the Presiding Justice and informed him of the episode in the office of Justice Sabio. He also went to ask Justice Villarama for his opinion as to who was "the rightful claimant" to the chairmanship of the Division that should decide the Meralco case. Justice Villarama allegedly replied that they "were both correct."

On July 18, 2008, at the pre-launching meeting for the CA-CMIS, Justice Villarama had a "brief chat" with Justice Bruselas. The former told the latter that "both Justices Sabio and Reyes are correct in the sense that one (1) [of] them can properly assume chairmanship *either* under the exception provided in Sec. 2 (d), Rule VI of the *2002 IRCA* depending on the final disposition of the prayer for injunctive relief, or pursuant to the general rule enshrined in Sec. 7 (b), Rule VI."[108]

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[107] Affidavit dated August 7, 2008 of Justice Reyes, par. 23.

[108] Affidavit dated August 7, 2008 of Justice Villarama, par. 7. Under the same paragraph, Justice Villarama opined as follows:

> x x x the pending motion to lift TRO, which in effect is a motion for reconsideration of its issuance in the first place, the former Special Ninth Division x x x which issued the said TRO retains jurisdiction and should resolve the said motion. Upon the other hand, if the application for preliminary injunction is denied or remained unacted upon, the position of Justice Reyes could be sustained on the ground that the exception under Sec. 2 (d), Rule VI does not come into the picture and therefore the *ponente* of the case (Justice Roxas) *and the two (2) other members* present Eighth Division) (sic) to which Justice Roxas was transferred should now assume jurisdiction over the case. However, considering the pendency of the motion to lift TRO and the fact that Justice Sabio, Jr. as Acting Chairman of the Special Ninth Division, together with Justices Roxas and Vidal, had presided and heard the oral arguments of the parties on MERALCO's application for preliminary injunction, the more prudent course of action is to allow the Special Ninth Division to resolve the motion to lift TRO and other pending matters, as well as the application for issuance of writ of preliminary injunction.
>
> As a matter of procedure and orderly administration of justice in the CA, I think the case should be retained by the Special Ninth Division chaired

On July 21, 2008, Justice Roxas personally filed with the Presiding Justice[109] an "Interpleader Petition"[110] praying that Presiding Justice Vasquez "decide which division Chairman (Justice Sabio's Former Special 9th Division or Justice B. L. Reyes' 8th Division) should sign the Preliminary Injunction or Decision."[111] Justice Roxas averred that "[t]he impasse between two Chairmen from two Divisions has to be resolved much earlier than July 30, 2008 because July 30, 2008 is the expiration date of the TRO issued by the Special 9th Division (signed by Justice Jose L. Sabio, Jr., Justice Vicente Q. Roxas [*ponente*] and Justice Myrna Dimaranan-Vidal)." He opined that the two Chairpersons differed in the interpretation of Sections 1 and 2 (d) in relation to Section 5 of Rule VI on Process of Adjudication of the *Internal*

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by Justice Sabio, Jr. until the resolution of the incidents therein, *i.e.*, motion to lift TRO and inhibition. The impracticality of transferring the case to the present division of the *ponente* (Eighth Division), instead of letting the case remain with those Justices of the Special Ninth Division which had issued a TRO and heard the application for preliminary injunction, is highlighted by the fact that there are pending motions still unresolved, voluminous pleadings and documents have been submitted by both parties which would take time to study and deliberated upon by the Justices, and the extreme urgency of MERALCO's petition necessitating swift resolution of the legal issues presented.

And as I explained to Justice Bruselas, Jr., in the event that the Special Ninth Division chaired by Justice Sabio, Jr. *grants the application for preliminary injunction*, Justice Bruselas, Jr. and Justice Reyes would have no authority at all to participate in the case, in accordance with the mandate of Sec. 2 (d), Rule VI of the *2002 IRCA*, since the case shall then remain with Justice Roxas and Justices Sabio and Vidal of the former Special Ninth Division, the latter two (2) Justices having both *participated in the issuance of the writ of preliminary injunction.* On the other hand, if such application for preliminary injunction is denied by the Special Ninth Division, then said provision would have no application. Hence, there could be no dispute that the two (2) other Members of the present Eighth Division to which Justice Roxas was transferred, Justices Reyes and Bruselas, shall participate in the adjudication of the case;

[109] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 13.

[110] *Rollo* of A.M. No. 08-8-11-CA, p. 9.

[111] For Justice Roxas the "Interpleader Petition" was both a letter and a memorandum for the Presiding Justice (TSN August 14, 2008 66-68).

Rules of the Court of Appeals (IRCA).[112] His stand was that the IRCA "should be ***strictly*** applied" because "[w]hen the provisions are ***clear***, there is ***no room for interpretation***."

Justice Roxas endorsed his "Interpleader Petition" to Justice Reyes for his "signature or dissent" to the "finalized MERALCO Decision," which had been in Justice Reyes' possession since July 14, 2008.[113] He also gave the *rollo* of the case to Justice Reyes.[114]

Presiding Justice Vasquez allegedly told Justice Roxas that as Presiding Justice, he had no authority to rule on the Interpleader Petition, which is not an administrative concern over which the Presiding Justice must intervene. Nevertheless, to avoid further discussion, the Presiding Justice told Justice Roxas that he would study the matter.[115]

On July 22, 2008, Justice Reyes wrote the Presiding Justice a letter on "what was discussed between us last 17 July 2008 at around 3:30 p.m."[116] Apparently the Presiding Justice had

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[112] These rules state:

Sec. 1. *Justice Assigned for Study and Report.* – Every case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division in the same station.

Sec. 2. *Justices Who May Participate in the Adjudication of Cases.* – In the determination of the two other Justices who shall participate in the adjudication of cases, the following shall be observed:

x x x x x x x x x

(d) When, in an original action or petition for review, any of these actions or proceedings, namely: (1) giving due course; (2) granting writ of preliminary injunction; (3) granting new trial; (4) granting execution pending appeal have been taken, the case shall remain with the Justice to whom the case is assigned for study and report and the Justices who participated therein, regardless of their transfer to other Divisions in the same station.

Sec. 5. *Action by a Justice.* – All members of the Division shall act upon an application for temporary restraining order and writ of preliminary injunction. xxx.

[113] Exh. 8-Roxas; *Rollo* of A.M. No. 08-8-11-CA.

[114] Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 26.

[115] Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 13.

[116] *Rollo* of A.M. No. 08-8-11-CA, p. 12.

suggested "to endorse the case and have the Special Ninth Division direct the respondents to file their simultaneous comments on the petitioners' Urgent Motion (For Honorable BIENVENIDO L. REYES to Assume Chairmanship of the Division in the Instant Case) dated 10 July 2008."

Justice Reyes expressed "doubts" that the suggestion was "most prudent," as the dispute "revolves around the correct interpretation" of the IRCA. He believed that since the question was "purely internal," the CA should not seek "enlightenment" from the litigants for it would only be construed against its "competence." He shared Justice Cruz's and Roxas' interpretation of the IRCA. Hence, he urged the Presiding Justice to decide the matter; otherwise, he would interpret the rules according to his "best lights and act accordingly."

On July 23, 2008, Presiding Justice Vasquez asked for the *rollo* of CA G. R. No. SP No. 103692 so he could "properly submit the requested opinion." It was then that he came across the unresolved motion praying for the inhibition of Justice Roxas and the pending urgent motion to lift the TRO or to hold its enforcement in abeyance. The Presiding Justice considered the latter as a motion for reconsideration of the Resolution issuing the TRO.[117]

Meanwhile, at noon of that day, as Justice Reyes had not yet received "any reaction" from the Presiding Justice, he signed the decision as well as the Certification. It was promulgated on the same day.

The decision was promulgated without waiting for the Presiding Justice's opinion on whether it was the Eighth or Special Ninth Division that should decide the case. Justice Roxas alleged that he did not expect the Presiding Justice to "answer" or resolve the matter anyway.

On July 24, 2008, Presiding Justice Vasquez issued his reply to Justice Reyes' letter and Justice Roxas' "Interpleader-Petition." The Presiding Justice claimed having doubts on whether he

[117] Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 15.

possessed "the authority to decide the subject conflict" simply because under the IRCA, the Presiding Justice has control and supervision only over administrative affairs of the Court. The controversy was certainly not an administrative matter but Section 11 of Rule VIII of the IRCA provides that the Presiding Justice "has the authority to act on any matter not covered" by the Rules although such action should be reported to the Court *en banc*.

The Presiding Justice expressed in his letter the view that "the (Special Ninth) Division that issued the temporary restraining order should continue resolving the injunctive prayer in the petition" because it was the Division that issued the Resolution granting the TRO and setting the hearing on the application for the issuance of a writ of preliminary injunction, aside from the fact that the parties did not contest the authority of Justice Sabio as Division Chairman at the time, although Justice Reyes had reported back to work. Moreover, the motion for inhibition and the urgent motion to lift the TRO "have a bearing" on the application of Section 2 of Rule VI of the IRCA, especially because Section 7 (b) of Rule VI[118] points to the retention of the case by the Special Ninth Division. Furthermore, the new Division headed by Justice Reyes may not be allowed to resolve the pending incidents because two of its members, Justices Reyes and Bruselas did not participate in the hearing on June 23, 2008. He did not believe that Justice Reyes would be charged with dereliction of duty should he not assume the chairmanship. The Presiding Justice ended his letter with the hope that the matter would be "laid to rest" and that whoever would be dissatisfied "with its outcome may elevate the matter to the Supreme Court."

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[118] Section 7 (b) of Rule VI of the IRCA provides that "a motion for reconsideration of a decision or resolution shall be acted upon by the *ponente* and the other members of the Division, whether of 3 or 5, and whether regular or acting, who participated in the rendition of the decision or resolution sought to be reconsidered, irrespective of whether such members are already in other Divisions at the time the motion for reconsideration is filed or acted upon, provided that they are still in the same station, otherwise Section 2, Rule 6 shall apply."

At 2:00 p.m. that day, Justice Sabio informed the Presiding Justice that a decision had been promulgated in the Meralco case the previous day. The Presiding Justice was surprised because Justices Roxas and Reyes had asked him to resolve the impasse on the Division chairmanship. Upon inquiry, the Presiding Justice found that the decision had indeed been promulgated at 4:10 p.m. on July 23, 2008.[119]

It was also on July 24, 2008 that Justice Dimaranan-Vidal received a call from Justice Sabio, informing her that Meralco had offered him a bribe of ₱10 million "in exchange for his voluntary stepping out from the Meralco case in order to give way to Justice B. L. Reyes," and that the decision in the Meralco case had been promulgated by the Eighth Division.[120] Shocked that Justice Roxas did not inform her "as a matter of judicial courtesy" of the scrapping of the decision which she signed on July 8, 2008, Justice Dimaranan-Vidal wrote a letter to the Presiding Justice dated July 24, 2008,[121] bringing to his attention "the apparent and obvious irregularities in the handing of CA-G.R. SP No. 103692," and complaining about Justice Roxas' "lack of judicial courtesy" in discarding for reasons she would not know, his "purported final Decision" that he had asked her to sign and which she signed "after a judicious study of the records and *rollo* thereof." Justice Roxas gave the lame excuse that he had "to incorporate therein some ten pages which he forgot to include in his Decision."

Justice Dimaranan-Vidal expressed "surprise and consternation" when she learned "on even date that a Decision" in the case had been promulgated on July 23, 2008 by the Eighth Division chaired by Justice Reyes, with Justices Roxas and Bruselas as members. She said:

My deepest regret is that the undersigned who already signed the supposed final draft of the Decision in the instant case which bears the signature of the *ponente,* was not even informed by the latter as

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[119] Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 17.

[120] Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 8.

[121] *Rollo* of A.M. No. 08-8-11-CA, p. 19.

a judicial courtesy at least, of the hurried easing out of the undersigned from the case. This inevitably posed even to an unprejudiced mind the following questions: under what basis was the case suddenly transferred to the 8th Division and why is it that neither the undersigned nor the Acting Chairman Justice SABIO, of the Special 9th Division not consulted thereof? and, foremost, what happened to the Decision which the undersigned signed after devoting her precious time and effort in carefully and laboriously examining the voluminous records and *rollo* of the case?

Sad to say the circumstance obtaining herein constitute a flagrant violation of the provision of Canon 5 particularly Sections 2 and 3 thereof of the New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC).

On July 25, 2008, Justice Bruselas wrote the Presiding Justice a letter,[122] which was "prompted by a disturbing telephone call" he received from Justice Sabio in the morning of July 24, 2008. Justice Sabio informed Justice Bruselas that, "after the injunction hearing" on June 23, 2008, Meralco offered him ₱10 Million "to either favor them or yield the chair" to Justice Reyes. Justice Sabio told Justice Bruselas that he had informed the Presiding Justice of the "bribery incident" and that he "was disgusted over the turn of events because he should have remained chair of the Special 9th Division that issued the TRO on the case." Justice Bruselas informed Justice Sabio that it was the first time that he heard of the matter and that he had "participated in the deliberation on the case and concurred with the *ponencia*" of Justice Roxas "without such information ever being taken up." Justice Sabio told Justice Bruselas that he would not leave the matter "as it is" because he would bring it up in the "open, to media, *etc*." Justice Sabio asked Justice Bruselas that if ₱10M was offered to him, how much would have been offered to the "others."

Troubled by the information, Justice Bruselas went to the Presiding Justice where Justice Dimaranan-Vidal, who had received the same call from Justice Sabio, joined them. After that meeting with the Presiding Justice, Justice Bruselas called up Justice

[122] *Rollo* of A.M. No. 08-8-11-CA, pp. 30 & 359.

Reyes who confirmed that he had heard about the "bribe offer" but that he did not reveal the same to Justice Bruselas as it "escaped" his mind. The effort of Justice Bruselas "to get in touch" with Justice Roxas proved futile.

Allegedly prompted by "the manner by which the decision x x x was arrived at, and how the decision was promulgated," and that unless an "immediate and thorough investigation thereon be undertaken" by the Court of Appeals, "both the individual and institutional integrity of the justices" and of the Court of Appeals would "undoubtedly be tarnished," Justice Sabio wrote on July 26, 2008 a letter[123] to the Presiding Justice, which precipitated the present investigation.

On July 28, 2008, the *Philippine Daily Inquirer* "carried an account" of the letter of Justice Dimaranan-Vidal to the Presiding Justice, without her knowing how her confidential letter to the Presiding Justice leaked out.[124]

Before Justice Bruselas delivered his letter to the Presiding Justice, he received a copy of the letter of Justice Sabio and, through a telephone call, reiterated his "full agreement with his desired investigation."

The Presiding Justice called the Court of Appeals to an "emergency *en banc* session at 10:00 a.m. on July 31, 2008 at the Session Hall to elicit the reaction of the Court and on the "possible effect" on the decision rendered. The session was also called in order that the "predicament experienced in CA-G.R. SP No. 103692" could be deliberated upon by the Committee on Rules with a view to amending the IRCA on the reorganization of the Court of Appeals. The Executive Justices of Cebu and Cagayan de Oro, Justices Antonio L. Villamor and Romulo V. Borja, respectively, were instructed to attend the *en banc* session to report to the other Justices in their stations what transpired at the session, and to "collect the personal reaction, comment or view" of the Justices on the matter.[125]

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[123] *Rollo* of A.M. No. 08-8-11-SC, p. 23.

[124] Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 10.

[125] *Rollo* of A.M. No. 08-8-11-CA, p. 233.

In its closed door *en banc* session on July 31, 2008, "after a torrid discussion of all the issues," the Court of Appeals decided, as follows:

(1) Refer the propriety of the actions of the Justices concerned to the Supreme Court, through the Office of the Court Administrator;

(2) Leave the matter regarding the validity of the decision rendered in the above-entitled case to the parties for them to take whatever legal steps they may deem appropriate in the usual course of procedure; and

(3) Refer the conflict in the interpretation of our Internal Rules to the Committee on Rules of the Court of Appeals in order to prevent the recurrence of a similar situation.[126]

After the *en banc* session, Justice Dimaranan-Vidal expressed in a letter for the Presiding Justice[127] her "strong reaction" to the paper of Justice Roxas "falsely" imputing to her "grandstanding before the media or resorting to media-recourse instead of just filing an administrative complaint before the Supreme Court," and taking exception to "the equally outrageous, revolting and baseless accusation that she is allegedly clinging" to the case. She asserted that she never leaked a copy of her letter to the *Philippine Daily Inquirer*, as her letter was only intended to bring to the attention of the Presiding Justice "the impropriety done by Justice Roxas in the MERALCO case" that resulted in her having been eased out of the case notwithstanding that she "carefully and judiciously" examined the *ponencia* with more than 50 pages, after devoting her "precious time" to such study, and affixing her concurrence thereto. Justice Dimaranan-Vidal reiterated her prayer for an investigation of the matter.

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[126] Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 21. According to the Presiding Justice, at one point, Justice Celia Leagogo commented "something like *pera-pera lang 'yan.*" She allegedly asked Justice Roxas why he could not answer the question of Justice Dimaranan-Vidal on where the decision she signed was (TSN August 12 [p.m.] 80-81).

[127] *Rollo* of A.M. No. 08-8-11-CA, p. 42.

Meanwhile, on that day, Mr. De Borja, executed an affidavit admitting that he was the businessman referred to by Justice Sabio, Jr. in his letter to Presiding Justice Vasquez. Mr. De Borja publicly claimed having learned "from the news" that Justice Sabio was "one of the justices" in the case arising from the order of the SEC to nullify the proxies issued in favor of the MERALCO management. He also alleged that Justice Sabio told him about the "blandishments coming from the government side," that he was being offered a promotion to the Supreme Court and money to favor the GSIS position. Mr. De Borja asked Justice Sabio, Jr., "What would it take for you to resist the government's offer?" and that the response of Justice Sabio, Jr. was "Fifty Million."

Justice Sabio asked permission from the Presiding Justice to hold a press conference the next day on account of the publicized affidavit of Mr. De Borja. The Presiding Justice told Justice Sabio that "this is a matter of self-defense on his part," hence, the Presiding Justice cannot stop him from doing so.

Justice Sabio issued a signed statement as an "initial response" to the affidavit of Mr. De Borja, "vehemently" denying that Mr. De Borja asked him what it would take for him to inhibit from the case, and that he "never asked for money" from him.[128]

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[128] *Rollo* of A.M. No. 08-8-11-CA, pp. 102 & 120. It reads in full as follows:

INITIAL RESPONSE TO THE AFFIDAVIT OF MR. FRANCIS ROA DE BORJA date July 31, 2008.

As initial reaction to the affidavit of Francis de Borja. I find it not only ridiculous but also incredible. He has absolutely twisted the facts to suit a wicked end.

I vehemently deny that he ever asked me what it takes to inhibit from the case; nor give any reply in the manner that he stated in the affidavit. I NEVER ASKED FOR MONEY.

On the contrary, he told me that he was sent by Manolo Lopez, who was with him in the car because it was a matter of life and death for them. And so they wanted the case to be "ensured." He mentioned about the abuses committed against the Lopezes during the Marcos time and now being done by the Arroyo administration. And so he pleaded for me to accept what he called a "win-win situation of ten million."

On August 1, 2008, Justice Sabio called the press conference to read a signed statement entitled "My Reaction to Mr. Francis De Borja's Affidavit dated July 31, 2008 on the Meralco-SEC Case."

Expressing anger at the "filthy lie" of Mr. De Borja, Justice Sabio decided to narrate "almost word for word" his "conversations" with Mr. De Borja.

In an affidavit dated August 1, 2008, which Evelyn Clavano[129] executed in Davao City, she stated that —

> Francis de Borja requested me if I have the cell phone number of Justice Jose L. Sabio Jr. He related that because he was very close to the Lopezes of Meralco, he wanted to call him regarding his possible inhibition in a certain Meralco case, wherein he was designated as a substitute member of the division vice a justice who was temporarily on leave by reason of sickness. He further said that the Lopezes desire that the same Justice, with whom the Lopezes are more comfortable, to sit in the division.
>
> So, I gave Francis de Borja the cell phone number of Justice Jose. L. Sabio, Jr. through business card.
>
> x x x x x x x x x.

On August 4, 2008, the Supreme Court constituted the Panel of Investigators to investigate "(1) alleged improprieties of the actions of the Justices of the Court of Appeals in CA-G.R. SP No. 103692 (*Antonio V. Rosete, et al. v. SEC,*

What they are doing now is obviously a SMEAR CAMPAIGN. Since they have the money and the resources, they will do all they can to discredit me.

This is only my initial statement. I will hold a press conference at about ten o'clock in the morning tomorrow at may office in the Court of Appeals and detail everything that transpired between me and Mr. Francis Roa de Borja.

31 July 2008

(Sgd.)

JOSE L. SABIO, JR.

ASSOCIATE JUSTICE

COURT OF APPEALS

[129] *Rollo* of A.M. No. 08-8-11-CA, 136.

et al.) and (2) the alleged rejected offer or solicitation of bribe disclosed respectively by Mr. Justice Jose Sabio and Mr. Francis de Borja."

The Panel of Investigators held hearings from August 8 to 23, 2008. Affidavits were submitted to the Panel to serve as the parties' direct testimonies upon which they were cross-examined by the Panel and the other parties.

On September 4, 2008, the Panel of Investigators submitted its Report of even date to the Court *en banc.*

According to the Report, "the investigation has revealed irregularities and improprieties committed by the Court of Appeals Justices in connection with the MERALCO case, CA-G.R. SP No. 103692, which are detrimental to the proper administration of justice and damaging to the institutional integrity, independence and public respect for the Judiciary."[130]

Findings regarding the conduct of Associate Justice Vicente Q. Roxas

Justice Roxas inexcusably failed to act on a number of motions of the parties prior to the promulgation of the Decision.

As found by the Panel of Investigators, several motions were not resolved or acted upon by Justice Roxas. These were enumerated in the Report as follows:

(a) The "Urgent *Ex-Parte* Motion to Defer Action on any Incident of the Petition Pending Resolution of Re-Raffle" filed by GSIS on May 29, 2008 soon after this case was filed on that date (*Rollo,* pp. 185-186).

b) GSIS' "Urgent *Ex-Parte* Motion to Inhibit" Justice Roxas, which was filed on May 30, 2008. **As the motion raised a prejudicial question, Justice Roxas should have resolved it before issuing the TRO sought by Meralco, but he never did** (*Rollo,* pp. 220-223).

(c) GSIS' Motion to Lift TRO which was filed on May 30, 2008 (*Rollo*, pp. 187-210).

[130] Report dated September 4, 2008, Panel of Investigators, p. 44.

(d) GSIS' Motion filed on June 18, 2008, praying that it be allowed to use Power point at the hearing on June 23, 2008. On June 20, 2008, the SEC filed a similar motion. Both motions were not acted upon by Justice Roxas (*Rollo,* pp. 593-621).

(e) Meralco's "Motion for Extension of Time to file their Consolidated Memorandum of Authorities and Reply to Repondent SEC's Comment" filed on June 25, 2008 (*Rollo*, pp. 981-987).

(f) Meralco's "Urgent Motion for Honorable Justice Bienvenido L. Reyes to Assume Chairmanship of the Division in the Instant Case," which was filed on July 10, 2008 (*Rollo,* pp. 1262-1274).[131] (emphasis supplied)

We agree with the Panel of Investigators that "by ignoring or refusing to act on the motion for his inhibition, Justice Roxas violated Rule V, Section 3, third paragraph of the IRCA, which provides that he should resolve such motion in writing with copies furnished the other members of the Division, the Presiding Justice, the Raffle Committee, and the Division Clerk of Court." The pertinent portion of the said provision states:

Sec. 3. Motion to Inhibit a Division or a Justice. – x x x

x x x x x x x x x

A motion for voluntary inhibition of a Justice shall be acted upon by him alone in writing, copy furnished the other members of the Division, the Presiding Justice, the Raffle Committee and the Division Clerk of Court.

This Court cannot agree with Justice Roxas' proposition that the issuance of the TRO constitutes an implied denial of the motion to inhibit since under IRCA the obligation of the Justice to act on such a motion is mandatory.

Furthermore, the Court finds well-taken the Panel's finding that "Justice Roxas' failure to act on the other motions of the parties violated Canon 3, Rule 3.05 of the 1989 *Code of Judicial Conduct* (which applies in a suppletory manner to the *New Code of Judicial Conduct* for the Philippine Judiciary) providing that:

[131] *Ibid.,* p. 54.

"Rule 3.05. – A judge shall dispose of the court's business promptly and decide cases within the required periods."

Even Section 5, Canon 6 of the *New Code of Judicial Conduct* mandates that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Thus, it has become well-settled in jurisprudence that even just undue delay in the resolving pending motions or incidents within the reglamentary period fixed by law is not excusable and constitutes gross inefficiency.[132] With more reason, this Court finds suspicious and reprehensible the failure of Justice Roxas to act at all on pending motions and incidents in CA-G.R. SP No. 103692.

This is in fact not the first time that Justice Roxas has been cited administratively for failure to resolve pending incidents in cases assigned to him. In *Orocio v. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, this Court imposed a ₱15,000 fine on Justice Roxas for unwarranted delay in resolving two motions for reconsideration in another case and sternly warned him that future commission of any act of impropriety will be dealt with more severely.

Justice Roxas is guilty of gross dishonesty.

Apart from Justice Roxas' inexcusable inaction on pending incidents in the Meralco case, the Panel of Investigators found that he had been dishonest and untruthful in relation to the said case. The Court adopts the following findings of the Panel:

2. Justice Roxas was dishonest and untruthful.

(a) Justice Roxas admitted that the "Transcript of Final Decision," which is supposed to be a transcript of the deliberation on July 14, 2008 of the Eighth Division on the final decision in the Meralco case was not a true "transcript" of the minutes of the meeting, but purely a "transcript from memory" because no notes were taken, no stenographer was present, and no tape recorder was used. It was in fact a drama which he composed "from my recollection" to comply

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[132] *Sabatin v. Mallare*, A.M. No. MTJ-04-1537, March 25, 2004; *Arcenas v. Avelino*, A.M. No. MTJ-06-1642, June 15, 2007.

with Sec. 9, Rule VI of the IRCA which requires that "minutes of the meeting, *i.e.*, deliberation, shall be kept." The so-called "transcript" is a **fabrication** designed to deceive that there had been compliance — when actually there was none — with the prerequisite of the IRCA that consultation and/or deliberation among the members of the Division must precede the drafting of a decision.

(b) The statement in the "transcript" that it was a "recap from our previous deliberations" was another **falsehood** because there had been no previous deliberations.

(c) The reference in the "transcript" to a "Final Report of Justice Roxas" was also **false** for Justice Roxas admittedly did not submit a "report" as *ponente*, as required by Sec. 9, Rule VI of the IRCA, for deliberation by the Eighth Division on July 14, 2008. The "Final Report" which he submitted was admittedly the decision itself which he and Justice Bruselas, Jr. had already signed. The "Final Report" was merely the title of the page that served as the cover of the decision. Hence, Justice B.L. Reyes' supposed closing statement in the "transcript" that — "We have covered every angle of the Final Report of Justice Roxas extensively" is also **false**. Justice B.L. Reyes testified at the investigation that he had not seen the "transcript" until the copy in the *rollo* was shown to him by Justice Callejo, Sr. during his cross-examination of Justice B. L. Reyes on August 26, 2008.

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(e) Justice Roxas' testimony that when he brought the Meralco decision to Justice Dimaranan-Vidal on July 8, 2008, it was only a draft for her to read, because she asked if she may read it, not for her to sign it, is **completely false**. This testimony was labelled by Justice Dimaranan-Vidal as **a lie**, and she called Justice Roxas **a liar**, because she did not ask to borrow the decision for her reading pleasure, but Justice Roxas personally brought it to her office for her to sign as a member of the Special Ninth Division. After poring over it the whole night, she signed it, as well as three (3) additional signature pages which were to be attached to three (3) other copies of the decision.[133]

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Indeed, the fabrications and falsehoods that Justice Roxas blithely proferred to the Panel in explanation/justification of

[133] *Ibid.*, pp. 55-57.

his questioned handling of the Meralco case demonstrated that he lacks the qualification of integrity and honesty expected of a magistrate and a member of the appellate court.

Under Rule 140 of the Rules of Court, dishonesty is considered a serious offense that may warrant the penalty of dismissal from the service. Under the Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is likewise considered a grave offense and warrants the penalty of dismissal even for the first offense. In the past, the Court has had the occasion to rule that:

> …dishonesty and falsification are considered grave offenses warranting the penalty of dismissal from service upon the commission of the first offense. On numerous occasions, the Court did not hesitate to impose such extreme punishment on employees found guilty of these offenses.
>
> Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for re-employment in the government service. **Dishonesty has no place in the judiciary**.[134]

Justice Roxas showed a lack of courtesy and respect for his colleagues in the Court of Appeals.

The Panel of Investigators reported on this matter in this wise:

> x x x x x x x x x

> (f) Justice Roxas was **thoughtlessly disrespectful** to a colleague and a lady at that, when he unceremoniously discarded, shredded, and burned the decision that Justice Dimaranan-Vidal had signed, because he allegedly forgot that Justice Dimaranan-Vidal and Justice Sabio, Jr. had already been "reorganized out" of the Special Ninth Division as of July 4, 2008, hence, out of the Meralco case. Out of courtesy, he should have explained to Justice Dimaranan-Vidal the reason why he was not promulgating the decision which she had signed.

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[134] *Madrid v. Quebral*, A.M. P-03-1744 & 1745, October 7, 2003.

The truth, it seems, is that Justice Roxas, who had consulted Justice Villarama, Jr. on which Division should decide the Meralco case, may have been convinced that it should be the Special Ninth Division. That is why he brought his decision to Justice Dimaranan-Vidal for her signature. However, somehow, somewhere, during the night, while Justice Dimaranan-Vidal was patiently poring over his decision, Justice Roxas was persuaded to bring his decision to the Eighth Division (to which he and Justice B.L. Reyes belong after the July 4, 2008 reorganization of the Court), it may have dawned on him that if the case remained in the Special Ninth Division, Justice Sabio, Jr. might dissent, requiring the Presiding Justice to constitute a special division of five. If he (Justice Roxas) should fail to obtain a majority of the Division on his side, he would lose his *ponencia*; someone else would become the *ponente* (perhaps Justice Sabio, Jr.). That may be the reason why he junked Justices Sabio, Jr. and Dimaranan-Vidal (even if the latter concurred with his decision) because he was unsure of Justice Sabio, Jr. He chose to cast his lot with his companions in the Eighth Division — Justices B. L. Reyes and Bruselas, Jr. — with whom he and Meralco were "comfortable".

(g) J. Roxas was **disrespectful to Presiding Justice Vasquez, Jr.** whose ruling on his "Interpleader Petition" he sought on July 21, 2008, but he promulgated the Meralco decision two (2) days later, on July 23, 2008, without waiting for Presiding Justice Vasquez, Jr.'s ruling which came out on July 24, 2008, only three (3) days after the Interpleader Petition was filed by him, and two (2) days after Justice B.L. Reyes also reiterated in writing his request for Presiding Justice Vasquez, Jr. to resolve the same chairmanship issue raised in the Interpleader. Presiding Justice Vasquez, Jr. was embarrassed and humiliated by Justices B.L. Reyes' and Roxas' **lack of courtesy and respect** for his position as head of the Court.

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There is an old adage which says to gain respect one must learn to give it. If judges and justices are expected to treat litigants, counsels and subordinates with respect and fairness, with more reason, that judges and justices should give their fellow magistrates the courtesy and professional regard due to them as their colleagues in the Judiciary. Thus, in Canon 5, Section 3 of the New Code of Judicial Conduct, judges are expected to "**carry out judicial duties with appropriate consideration for all persons**, **such as** the parties, witnesses,

lawyers, court staff and **judicial colleagues**, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties."

This Court cannot view lightly the discourteous manner that Justice Roxas, in his apparent haste to promulgate his decision in the Meralco case, treated his colleagues in the Court of Appeals. It behooves the Court to remind all magistrates that their high office demands compliance with the most exacting standards of propriety and decorum.

Justice Roxas' questionable handling of the Meralco case demonstrates his undue interest therein.

In the Report, the Panel of Investigators observed that Justice Roxas in fact began drafting his decision even prior to the submission of the parties' memoranda. As discussed in the Report:

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(d) Although the parties were given 15 days after the hearing on June 23, 2008, or up to July 8, 2008, to simultaneously submit their memoranda and memoranda of authorities, and actually submitted:

On July 7, 2008 – GSIS's 39 page- memorandum

On July 9, 2008 – SEC's 62 page-memorandum

On July 10, 2008 – MERALCO's 555 page-memorandum (by messenger) with memorandum of authorities

Justice Roxas prepared the decision before the parties had filed their memoranda in the case and submitted it to Justice Dimaranan-Vidal for her signature on July 8, 2008. His "rush to judgment" was indicative of "**undue interest and unseemly haste,**" according to J. Romero.

He **cheated** the parties' counsel of the time, effort, and energy that they invested in the preparation of their ponderous memoranda which, as it turned out, neither he nor the other members of the Eighth Division bothered to read before signing his decision. He made a

mockery of his own order for the parties to submit memoranda, and rendered their compliance a futile exercise.

x x x x x x x x x

(underscoring supplied)

We agree with Mme. Justice Romero's observation that the "rush to judgment" (even before the filing of the parties' memoranda) was indicative of Justice Roxas' **undue interest** and unseemly haste, especially when taken together with other circumstances. This inexplicable haste in resolving the case on the merits is likewise apparent in Justice Roxas' failure to resolve the several pending incidents and instead jumping ahead to deciding the case on the merits; his "rushing" of Justice Dimaranan-Vidal into signing his draft Decision on July 8, 2008 when the parties' memoranda have not yet all been filed with the CA; his precipitate transfer of the case to the Eighth Division for promulgation of decision, without notice to Justice Dimaranan-Vidal of the Special Ninth Division who had already signed his draft Decision and despite the unresolved Chairmanship dispute between Justice Reyes and Justice Sabio which he (Justice Roxas) even submitted to the Presiding Justice for appropriate action, just a few days before the promulgation.

We reiterate here that as the visible representation of the law and justice, judges are expected to conduct themselves in a manner that would enhance respect and confidence of the people in the judicial system. The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. This standard applies not only to the decision itself, but also to the process by which the decision is made.[135] This Court will not hesitate to sanction with the highest penalty magistrates who exhibit manifest undue interest in their assigned cases.[136]

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[135] *Edaño v. Asdala,* A.M. No. RTJ-06-1974, July 26, 2007.

[136] *Padilla v. Asuncion,* A.M. No. 06-44-CA-J.

In sum, this Court finds that Justice Roxas' multiple violations of the canons of the Code of Judicial Conduct constitute grave misconduct, compounded by dishonesty, undue interest and conduct prejudicial to the best interest of the service, which warrant his DISMISSAL from the service.

Findings regarding the conduct of Associate Justice Jose L. Sabio, Jr.

In the Report, the Panel found that Justice Sabio likewise committed improprieties in relation to the Meralco case.

The circumstances of the telephone call of Chairman Sabio to his brother Justice Sabio showed that Justice Sabio failed to uphold the standard of independence and propriety expected of him as a magistrate of the appellate court.

In his testimony before the Panel, Chairman Sabio admits that he called up Justice Sabio on May 30, 2008 from Davao City, in response to a resquest for help from a member of the Board of Trustees of Meralco. Notwithstanding the fact that Chairman Sabio called to relay to Justice Sabio the "rightness" of the GSIS' cause and asked him "to help GSIS" and that Justice Sabio allegedly told his brother that he would act in accordance with his conscience, the same still constituted a violation of Canon 13 of the *Code of Professional Responsibility* for lawyers, which provides that:

"A lawyer shall x x x refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court."

As they were both members of the Bar, it is incomprehensible to this Court how the brothers can justify their improper conversation regarding the Meralco case. As the Panel observed in its Report:

Ironically, both of them found nothing wrong with brother Camilo's effort to influence his younger brother's action in the Meralco case, because both believe that our Filipino culture allows

brother-to-brother conversation, even if the purpose of one is to influence the other, provided the latter does not agree to do something illegal.[137]

For the Panel, Justice Sabio violated Sections 1, 4, and 5, Canon 1 of the *New Code of Judicial Conduct for the Philippine Judiciary*, which provide that –

Sec. 1. Judges shall exercise the judicial function independently x x x free from extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

x x x x x x x x x

Sec. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Sec. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

In the Investigators' mind, although Justice Sabio signed the TRO in favour of Meralco contrary to his brother's advice, Justice Sabio's "unusual interest in holding on to the Meralco case," seemed to indicate that he may have been actually influenced by his brother "to help GSIS." In arriving at this conclusion, the Panel noted the following circumstances: (1) Justice Sabio adamantly refused to yield the chairmanship of the Special Ninth Division although the regular chairman, Justice Reyes had returned to duty on June 10, 2008; and, (2) Justice Sabio officiously prepared and signed a resolution (a chore for the *ponente* Justice V. Roxas to perform), requiring the GSIS and the SEC to comment on Meralco's "Motion for Justice B. Reyes to Assume the Chairmanship of the 9th Division," which he probably intended to delay the decision on the preliminary

[137] Report dated September 4, 2008, Panel of Investigators, p. 45.

injunction beyond the life of the TRO to the prejudice of Meralco and the advantage of the GSIS.

Based on the facts on record, the Court is wary of declaring that Justice Sabio had been influenced by his brother by speculating that he would have favored GSIS had he been a part of the division which rendered the decision in the Meralco case. However, we do find that it was improper for Justice Sabio to hold on to the chairmanship of the Ninth Division the (sic) despite the return of Justice Reyes, when Justice Sabio's designation as acting chairman was clearly only for the duration of Justice Reyes' leave of absence. We likewise note with disfavor his stubborn insistence on his own interpretation of the IRCA and hostile, dismissive attitude towards equally well-reasoned positions of his colleagues on the proper interpretation of their rules. Such conduct on the part of Justice Sabio did nothing to aid in the swift and amicable resolution of his dispute with Justice Reyes but rather fanned the flames of resentment between them. We deem this sort of behavior unbecoming for a magistrate of his stature.

Justice Sabio's conversations with Mr. De Borja were improper and indiscreet.

On this matter, the Court accepts the following findings in the Report:

> Knowing the nature of De Borja's profession, Justice Sabio, Jr. should have been wary of the former. He should have foreseen that De Borja had the Meralco case on his mind when he called Justice Sabio, Jr. True enough, De Borja mentioned the Meralco case and congratulated Justice Sabio, Jr. for having signed the TRO in favour of Meralco.
>
> But that was not the last time Justice Sabio, Jr. would hear from De Borja. A month later, after Justice Sabio, Jr. had presided at the hearing of Meralco's prayer for preliminary injunction on June 23, 2008, and the case was ripening for decision or resolution, De Borja again called up Justice Sabio, Jr. and asked to meet him over dinner to "chit chat" about the Meralco case.
>
> Instead of telling off De Borja that he could not, and would not, talk about the Meralco case, Justice Sabio, Jr. agreed to meet De

Borja in the lobby-lounge of the Ateneo Law School after his evening class in Legal Ethics in said school.

Justice Sabio Jr.'s action of discussing the Meralco case with De Borja was highly **inappropriate and indiscreet.** First, in talks with his brother; the second time in conversation with De Borja, Justice Sabio, Jr. broke the shield of **confidentiality** that covers the disposition of cases in the Court in order to preserve and protect the integrity and independence of the Court itself. He ignored the injunction in Canon 1, Section 8 of the *New Code of Judicial Conduct for the Philippine Judiciary* that: **"Judges shall exhibit and promote high standards of judicial conduct (and discretion) in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence."**

It was during that meeting with De Borja in the lobby-lounge of the Ateneo Law School, that De Borja allegedly offered him ₱10 million, in behalf of Meralco, to step out of the case and allow Justice Bienvenido Reyes to assume the chairmanship of the Special Ninth Division because Meralco was "not comfortable" with him (Justice Sabio, Jr.). He rejected the bribe offer because he "could not in conscience accept it."

Justice Sabio, Jr. was allegedly shocked and insulted that De Borja would think that he (Justice Sabio, Jr.) could be bribed or bought. The Panel is, however, honestly perplexed why in spite of his outraged respectability, Justice Sabio, Jr. called up De Borja two (2) days later (on July 3, 2008), to tell De Borja to stop "pestering" him with his calls. The Panel is nonplussed because, normally, a person who has been insulted would never want to see, much less speak again, to the person who had disrespected him. He could have just shut off his cell phone to De Borja's calls. De Borja denied that he reiterated his offer of ₱10 million to Justice Sabio, Jr. He denied saying that even if the case should go up to the Supreme Court, GSIS would still lose, hence, "*saying lang yung* ₱10 million; *baka sisihin ka pa ng mga anak mo*." He testified that his reply to Justice Sabio, Jr.'s call was "*deadma*" or indifference. Justice Sabio, Jr. blamed that call of his to a "lapse in judgment" on his part.

Be that as it may, the Investigating Panel finds more credible Justice Sabio, Jr.'s story about De Borja's ₱10 million-bribe-offer on behalf of Meralco, than De Borja's denial that he made such an offer. Why does the Panel believe him, and not De Borja?

First, because Justice Sabio, Jr. verbally reported the rejected bribe offer to CA Presiding Justice Conrado M. Vasquez, Jr. the next day — a fact admitted by Presiding Justice Vasquez, Jr.

Second, even though Justice Sabio, Jr. did not mention the bribe-offeror's name in both his verbal and written reports to Presiding Justice Vasquez, Jr., De Borja identified himself to the media as the person alluded to.

Third, De Borja's allegation, that Justice Sabio, Jr. wanted ₱50 million, not ₱10 million, is not believable, for, if Justice Sabio, Jr. quoted ₱50 million as his price, he would not have reported the ₱10 million bribe offer to Presiding Justice Vasquez, Jr. He would have waited for Meralco's reply to his counter-offer.[138]

x x x x x x x x x

Indeed, the Court agrees with the Panel that the allegation of solicitation on the part of Justice Sabio is not credible. Nevertheless, the continued communications between Justice Sabio and Mr. De Borja even after the latter's rejected bribery attempt is highly inappropriate and shows poor judgment on the part of Justice Sabio who should have acted in preservation of the dignity of his judicial office and the institution to which he belongs.

Premises considered, this Court is of the view that Justice Sabio's indiscreet and imprudent conversations regarding the Meralco case with his brother and Mr. De Borja and his actuations in the chairmanship dispute with Justice Reyes constitute simple misconduct and conduct unbecoming of a justice of the Court of Appeals which warrant the penalty of two (2) months suspension without pay.

Findings regarding the conduct of Associate Justice Bienvenido L. Reyes.

As previously discussed, Justice Reyes appealed to Presiding Justice Vazquez in a letter dated July 22, 2008, reiterating his (Justice Reyes') request that the Presiding Justice render an opinion which Division of the Court of Appeals — the Eighth Division with him as chairman, or the Special Ninth Division

[138] *Id.,* pp. 47-49.

chaired by Justice Sabio should resolve the Meralco case. This was in conjunction with an Interpleader filed by Justice Roxas on the same issue with the Presiding Justice. Yet, despite the fact that the Presiding Justice informed Justices Reyes and Roxas that he would study the matter, Justice Reyes and Justice Roxas, together with Justice Bruselas, promulgated the decision in the Meralco case on July 23, 2008. Justice Reyes and Justice Roxas did not withdraw their request for a ruling nor did either of them advise the Presiding Justice beforehand of their intention to proceed with the resolution of the Meralco case. Thus, when the Presiding Justice issued his ruling on the chairmanship dispute on July 24, 2008, he was unaware of the promulgation of the Meralco decision on July 23, 2008, under the aegis of Justice Reyes' Eighth Division. As found by the Panel, "Presiding Justice Vasquez, Jr. was completely taken aback when he learned about it on July 24, 2008, the same day that he issued his opinion on the chairmanship issue which by then had become *functus officio*. He felt belittled and humiliated by the discourtesy of the two justices to him."

It bears repeating here that under Canon 5, Section 3 of the New Code of Judicial Conduct, judges are mandated to show the appropriate consideration and respect for their colleagues in the Judiciary.

Thus, we adopt the finding of the Panel on this point and find Justice Reyes guilty of simple misconduct, which is mitigated by the fact that he repeatedly asked Presiding Justice Vasquez to act on his request to rule on the conflicting interpretation of the IRCA. However, Justice Reyes should be reprimanded for taking part in the decision of the subject case without awaiting the ruling of the Presiding Justice.

Findings regarding the conduct of Justice Myrna Dimaranan-Vidal

The Court finds well-taken and adopts the findings of the Panel of Investigators, to wit:

Justice Dimaranan-Vidal deviated from the IRCA when she allowed herself to be rushed by Justice Roxas to sign the Meralco decision

on July 8, 2008, without reading the parties' memoranda and without the deliberation among members of the Division required by the IRCA. She knew that the TRO would not expire until July 30, 2008 – some three (3) weeks away from July 8, 2008 – yet she allowed herself to believe Justice Roxas' misrepresentation that signing the decision was urgent. Her compliance with certain dissembling practices of other justices of the Court, in violation of the IRCA, showed weakness and lack of independence on her part.[139]

The following sections of Canon 1 of the Code of Judicial Conduct are instructive in this regard:

SEC. 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

SEC. 2. In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

Allowing a fellow justice to induce her to deviate from established procedure constitutes conduct unbecoming a justice for which Justice Dimaranan-Vidal should be ADMONISHED to be more circumspect in the performance of her judicial duties.

Findings regarding the conduct of Presiding Justice Conrado M. Vasquez

It is the view of the Panel of Investigators that Presiding Justice Vasquez failed to provide the leadership expected of him as head of the Court of Appeals. The following quote from the Report summarizes the perceived lapses on the part of the Presiding Justice:

Clearly, Presiding Justice Vasquez, Jr. had been **indecisive** in dealing with the turmoil arising from the Meralco case. He **vacillated** and **temporized** on resolving the impasse between Justice Sabio, Jr. and Justice B. L. Reyes over the chairmanship of the Division that should hear and decide the Meralco case. He failed to take

[139] *Id.*, p. 59.

action on the reported bribe-offer by Meralco to J. Sabio, Jr. He **hesitated** to assert his leadership of the Court even when the parties repeatedly urged him to lay down the rule for them to follow. Was he hampered by the fact that he has relatives – two daughters – employed in the GSIS, and a sister who is a consultant thereof? He pleaded lack of authority. Was he not aware then, or did he discover too late, that under Section 11, Rule VIII of the IRCA, he is in fact **authorized to act "on any matter"** involving the Court and its members? That Rule provides:

> **Sec. 11. x xx the Presiding Justice or any one acting in his place is authorized to act on any matter not covered by these Rules. Such action shall, however, be reported to the Court *en banc*.**

He should have convened the Court *en banc* as soon as the alleged bribery attempt on Justice Sabio, Jr. was reported to him, for it was an attempt to corrupt a member of the Court, calling for the "protection and preservation of the integrity of the judicial processes" of the Court, hence, an administrative matter cognizable by the Court *en banc*. Section 5 (c), Rule I of the IRCA, provides:

> **Sec. 5. Matters cognizable by the Court *en banc*.- The Court *en banc***
>
> **shall, *inter alia*:**
>
> **(a) x x x**
>
> **(b) Adopt uniform administrative measures, procedures, and policies for the protection and preservation of the integrity of the judicial processes, x x x.**

Presiding Justice Vasquez admitted his "lapses in judgment."[140]

In the light of the foregoing observations of the Panel, this Court is of the view that much of the trouble now being faced by the Court of Appeals could have been averted by timely, judicious and decisive action on the part of the Presiding Justice. Certainly, this unpleasant and trying episode in failure to act in the early part of his tenure as Presiding Justice has indelibly impressed upon him what is required of him as leader of the second highest court in the land. Nevertheless, Presiding Justice

[140] *Id.,* p. 52.

Vasquez is hereby severely reprimanded for his failure to act promptly and decisively on the controversy as required of him by the IRCA.

Findings regarding other personalities involved in the Meralco case

Although the Presiding Justice in his letter dated August 1, 2008 only referred to this Court "the propriety of the actions of the Justices concerned" in the Meralco case, we cannot simply turn a blind eye to the facts brought to light during the investigation that relate to potential liabilities of other personalities in the Meralco case.

With respect to Chairman Sabio, this Court has the power to discipline members of the Bar and his attempt to influence a member of the Judiciary, his brother at that, should be referred to the Bar Confidant for appropriate action.

With respect to Mr. De Borja, the present investigation has given this Court reason to believe that Mr. De Borja may be criminally liable for his attempt to bribe a magistrate of the Court of Appeals. This matter should be referred to the Department of Justice for appropriate action.

Pursuant to Section 13, Article VIII of the Constitution, this *per curiam* decision was reached after deliberation of the Court *en banc*. At the outset, the offer of three (3) members of the Court to recuse themselves was denied by the Court. Except for two members of the Court who were allowed to inhibit themselves from the case, the Justices voted as follows: Twelve Justices voted for the dismissal from service of Associate Justice Vicente Q. Roxas and one (1) voted for his suspension from the service for six (6) months. Ten (10) Justices voted for two (2) month suspension from service without pay of Associate Justice Jose L. Sabio, one (1) voted for six-month suspension, one (1) for reprimand only as he should be credited for being a "whistle blower" and one (1) for his dismissal from the service. Eight (8) Justices voted to reprimand Associate Justice Bienvenido L. Reyes and five (5) for his suspension from the service for one (1) month. As to the rest, the voting was unanimous.

WHEREFORE, the Court RESOLVES as follows:

(1) Associate Justice Vicente Q. Roxas is found guilty of multiple violations of the canons of the Code of Judicial Conduct, grave misconduct, dishonesty, undue interest and conduct prejudicial to the best interest of the service, and is DISMISSED from the service, with FORFEITURE of all benefits, except accrued leave credits if any, with prejudice to his re-employment in any branch or service of the government including government-owned and controlled corporations;

(2) Associate Justice Jose L. Sabio, Jr. is found guilty of simple misconduct and conduct unbecoming of a justice of the Court of Appeals and is SUSPENDED for two (2) months without pay, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(3) Presiding Justice Conrado M. Vasquez, Jr. is SEVERELY REPRIMANDED for his failure to act promptly and decisively in order to avert the incidents that damaged the image of the Court of Appeals, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(4) Associate Justice Bienvenido L. Reyes is found guilty of simple misconduct with mitigating circumstance and is REPRIMANDED, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(5) Associate Justice Myrna Dimaranan-Vidal is found guilty of conduct unbecoming a Justice of the Court of Appeals and is ADMONISHED to be more circumspect in the discharge of her judicial duties;

(6) PCGG Chairman Camilo L. Sabio's act to influence the judgment of a member of the Judiciary in a pending case is hereby referred to the Bar Confidant for appropriate action;

(7) Justice Jose L. Sabio, Jr.'s charge against Mr. Francis R. De Borja for attempted bribery of a member of the Judiciary is hereby referred to the Department of Justice for appropriate action.

This Decision shall take effect immediately.

SO ORDERED.

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

Corona, J., the Chief Justice certifies that J. Corona participated in the case.

Carpio, J., on official leave.

THIRD DIVISION

[A.C. No. 6505. September 11, 2008]

JESSICA C. UY, *complainant, vs.* **ATTY. EMMANUEL P. SAÑO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; EXPLAINED. — [T]he practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, a member of the legal fraternity should refrain from doing any act which might lessen, in any degree, the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.

2. ID.; NOTARIES PUBLIC; NOTARIZATION; NATURE. — [N]otarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified and authorized may act as notaries public. It

must be underscored that the act of notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

3. ID.; ID.; MALPRACTICE AND FALSIFICATION OF PUBLIC DOCUMENTS; A LAWYER'S ACT OF NOTARIZING DOCUMENTS WITHOUT THE REQUISITE COMMISSION THEREFOR, A CASE OF. — [T]he requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer's act of notarizing documents without the requisite commission therefor as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents. For such reprehensible conduct, the Court has sanctioned erring lawyers by suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment. Time and again, we have held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. One who is performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By acting as a notary public without the proper commission to do so, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

4. ID.; ATTORNEYS; SUSPENSION OR DISBARMENT OF ATTORNEYS; PURPOSE. — An attorney's right to practice law may be resolved by a proceeding to suspend him, based on conduct rendering him unfit to hold a license or to exercise

> the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring him as an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of attorney, and thus, to protect the public and those charged with the administration of justice, rather than to punish an attorney.

D E C I S I O N

NACHURA, *J.*:

This is a disbarment case filed[1] by complainant Jessica C. Uy against respondent Atty. Emmanuel P. Saño for allegedly notarizing several documents despite the expiration of his commission.

Respondent was the counsel for a certain Pablo Burgos, an intervenor in a civil case docketed as EJF-01-03-10 for *Foreclosure of Real Estate Mortgage*.[2] In the course of the proceedings, respondent introduced before the trial court, certain documents, including a *Deed of Absolute Sale* [3] which he notarized on December 7, 2001 under Doc. No. 376, Page No. 73, Book No. V, Series of 2001.

It appeared, however, in a letter[4] dated February 9, 2004 of Atty. Blanche Astilla-Salino, Clerk of Court VI, that no notarial commission was issued to respondent for the years 2000-2001 and 2001-2002. Hence, the instant administrative case.

Respondent, for his part, admitted that he was not issued a notarial commission during the aforesaid period; yet, he performed notarial works. He, however, explained that he applied, through a representative, for a notarial commission in the year 1998

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[1] Embodied in a petition filed before this Court, through the Office of the Bar Confidant, dated July 10, 2004; *rollo*, pp. 2-4.

[2] *Rollo*, p. 2.

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

[4] *Id.* at 13.

and was commissioned as such from 1998 to 1999.[5] In 2000, he applied for the renewal of his commission, again through an office aide, who later informed him that his application was approved.[6] By virtue of said representation, respondent resumed his notarial work; only to find out later that he was not given a new commission.[7] He exerted earnest efforts in locating the whereabouts of the office aide but to no avail. Having acted on the mistaken belief that he still had his notarial commission, respondent pleaded that he be excused and given clemency for this fiasco and be allowed to correct and make amends.[8]

In a Resolution[9] dated December 8, 2004, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On September 1, 2005, Commissioner Rebecca Villanueva-Maala submitted her report and recommendation, [10] the pertinent portion of which reads:

CONCLUSION AND RECOMMENDATION:

From the facts and evidence presented, we find sufficient proof to warrant disciplinary action against the respondent. Notarizing documents after the lawyer's commission as notary public had expired is malpractice and gross misconduct (*Flores vs. Lozada*, 21 SCRA 1267). Respondent's explanation that he was made to believe by his agent that his commission has been filed and approved cannot be accepted for to rule otherwise will be to enable irresponsible lawyers to avoid disciplinary action by simply attributing the problem to his aide/secretary or employee (*Gutierrez vs. Zulueta*, 187 SCRA 607).

WHEREFORE, premises considered, we hereby recommend that respondent ATTY. EMMANUEL SAÑO be SUSPENDED for a period

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[5] *Id.* at 37.

[6] *Id.* at 38.

[7] *Id.*

[8] *Id.* at 39.

[9] *Id.* at 44.

[10] *Id.* at 92-95.

of SIX MONTHS from receipt hereof from the practice [of] his profession as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.[11]

Per Resolution No. XVII-2006-115 dated March 20, 2006, the IBP Board of Governors modified the report and recommendation of Commissioner Villanueva-Maala by increasing the recommended period of suspension from six (6) months to one (1) year. In addition, the Board resolved to revoke respondent's notarial commission and disqualified him from reappointment as notary public for a period of two (2) years.

We agree with the IBP's conclusion, finding respondent guilty of malpractice, warranting disciplinary action. We, however, find the penalty recommended by the Board of Governors to be too harsh; instead, we sustain the Investigating Commissioner's recommendation.

At the threshold, it is worth stressing that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions.[12]

The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, a member of the legal fraternity should refrain from doing any act which might lessen, in any degree, the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.[13]

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[11] *Id.* at 95.

[12] *St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 621-622; *Zoreta v. Simpliciano*, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 8.

[13] *St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 622; *Zoreta v. Simpliciano*, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9.

Apropos to the case at bar, it has been emphatically stressed that notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified and authorized may act as notaries public. It must be underscored that the act of notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[14]

Respondent admitted that he applied for a notarial commission in 1998. Such application, according to him, was facilitated by a representative. In renewing his commission for 2000 until 2002, he again relied on the assistance offered by an office aide. It appears from respondent's Comment that he, in fact, did not personally know the said office aide; yet, he completely relied on his representation that this office aide would facilitate respondent's renewal of his notarial commission. At the very least, respondent should have demanded from the office aide documentary proofs of the approval of his commission. Besides, respondent could have easily verified the aide's representation at the office of the Executive Judge. His actuation clearly shows disregard of the requirements for the issuance of notarial commission. His effort in shifting the responsibility to the office aide does not strike the Court as the kind of diligence properly required of a member of the bar in performing his duties as notary public.[15]

To be sure, the requirements for the issuance of a commission as notary public must not be treated as a mere casual formality.

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[14] *St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 626-627; *Zoreta v. Simpliciano*, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9-10; see *Buensuceso v. Barrera*, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 312, citing *Joson v. Baltazar*, 194 SCRA 114, 119 (1991).

[15] *Buensuceso v. Barrera*, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 311.

The Court has characterized a lawyer's act of notarizing documents without the requisite commission therefor as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents. For such reprehensible conduct, the Court has sanctioned erring lawyers by suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment.[16]

Time and again, we have held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. One who is performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By acting as a notary public without the proper commission to do so, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.[17]

As to the appropriate penalty, considering the circumstances obtaining in the instant case, and based on jurisprudence on this matter, suspension for six (6) months is adequate.

Complainant in the instant case presented only one document showing respondent's unauthorized notarization. However, by respondent's own admission, he had been placed in a mistaken belief that his commission was renewed from 2000 to 2002.

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[16] *Zoreta v. Simpliciano*, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 10.

[17] *St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 627.

During this two-year period, it seems entirely possible that he had similarly notarized, without legal authority, other still unidentified documents.[18]

In *Buensuceso v. Barrera*,[19] Atty. Joelito Barrera was administratively sanctioned for committing acts of unauthorized notarization. As in the instant case, Atty. Barrera claimed that he was unaware of said lack of authority, and he shifted the blame to his secretary to whom he had entrusted the task of making sure that his notarial commission would be renewed. Though only five documents were presented to prove his culpability, considering that more than twelve (12) years had lapsed, and it was possible that similar documents had been unlawfully notarized, the Court suspended him from the practice of law for a period of one year.

In the instant case, since only two years had lapsed prior to the discovery of the unauthorized act, six-month suspension suffices.

An attorney's right to practice law may be resolved by a proceeding to suspend him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring him as an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of attorney, and thus, to protect the public and those charged with the administration of justice, rather than to punish an attorney.[20]

WHEREFORE, premises considered, respondent Emmanuel P. Saño is hereby *SUSPENDED* from the practice of law for a period of six (6) months. In addition, his present notarial commission, if any, is *HEREBY REVOKED*, and he is

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[18] *Buensuceso v. Barrera*, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 312.

[19] A.C. No. 3727, December 11, 1992, 216 SCRA 309.

[20] *St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 622; *Zoreta v. Simpliciano*, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9.

DISQUALIFIED from reappointment as a notary public for a period of two (2) years. He is further *WARNED* that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished all the courts of the land through the Court Administrator, as well as the IBP, and the Office of the Bar Confidant, and recorded in the personal records of the respondent.

SO ORDERED.

Tinga[*] *(Acting Chairman), Chico-Nazario, Velasco, Jr.,*[*] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 139047. September 11, 2008]

SPOUSES EMMA H. VER REYES and RAMON REYES, *petitioners, vs.* **DOMINADOR SALVADOR, SR., EMILIO FUERTE, FELIZA LOZADA, ROSALINA PADLAN, AURORA TOLENTINO, TRINIDAD L. CASTILLO, ROSARIO BONDOC, MARIA Q. CRISTOBAL and DULOS REALTY & DEVELOPMENT CORPORATION, TRINIDAD LOZADA, JOHN DOE and RICHARD DOE,** *respondents.*

[G.R. No. 139365. September 11, 2008]

MARIA Q. CRISTOBAL and DULOS REALTY & DEVELOPMENT CORPORATION, *petitioners, vs.* **DOMINADOR SALVADOR, SR., EMILIO FUERTE, FELIZA LOZADA, TRINIDAD LOZADA, ROSALINA PADLAN, AURORA TOLENTINO,**

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[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

TRINIDAD L. CASTILLO, ROSARIO BONDOC, SPOUSES EMMA H. VER REYES and RAMON REYES, *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; GUIDELINES FOR DIFFERENTIATING BETWEEN A CONTRACT TO SELL AND A CONTRACT OF SALE. — In *Coronel v. Court of Appeals*, this Court effectively provided the guidelines for differentiating between a contract to sell and a contract of sale, to wit: "The Civil Code defines a **contract of sale**, thus: Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. Sale, by its very nature, is a **consensual contract because it is perfected by mere consent**. The essential elements of a contract of sale are the following: a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b) Determinate subject matter; and c) Price certain in money or its equivalent. Under this definition, a Contract to Sell may not be considered as a Contract of Sale because the first essential element is lacking. In a **contract to sell**, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer."

2. ID.; ID.; ID.; CONTRACT TO SELL; THE INTENTION OF THE PARTIES TO EXECUTE A CONTRACT TO SELL MAY BE IMPLIED FROM THE PROVISIONS OF THE CONTRACT. — [T]he intention of the parties to execute a contract to sell may be implied from the provisions of the contract. While

Article 1478 of the Civil Code recognizes the right of the parties to agree that the ownership of the thing shall not pass to the purchaser until he has fully paid the price therefore, the same statutory provision does not require that such be expressly stipulated in the contract. In *Adelfa Properties, Inc. v. Court of Appeals*, the Court ruled that since the contract between the parties therein did not contain a stipulation on reversion or reconveyance of the property to the seller in the event that the buyer did not comply with its obligation, it may legally be inferred that the parties never intended to transfer ownership to the buyer prior to the completion of the payment of the purchase price. Consequently, the contract involved in the aforementioned case was a mere contract to sell.

3. ID.; ID.; ID.; ID.; EXPLAINED.— An agreement is x x x considered a contract to sell if there is a stipulation therein giving the vendor the rights to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period and to consequently open the subject property anew to purchase offers. In the same vein, where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell.

4. ID.; ID.; INTERPRETATION OF CONTRACTS; THE DENOMINATION OR TITLE GIVEN BY THE PARTIES IN THEIR CONTRACT IS NOT CONCLUSIVE OF THE NATURE OF ITS CONTENTS.— The Court looks beyond the title of x x x [a] document, since the denomination or title given by the parties in their contract is not conclusive of the nature of its contents. In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued. If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for Sps. Reyes.
People's Law Office for R. Bondoc.

Santiago Arevalo Asunsion and Associates for M. Cristobal & Dulos Realty Dev't. Corp.

Cristal Tenorio Law Office for R. padlan, A. Tolentino, T. Castillo and T. Lozada.

D E C I S I O N

CHICO-NAZARIO, *J.*:

The two Petitions for Review on *Certiorari*[1] now before this Court seek to challenge, under Rule 45 of the Rules of Court, the Decision[2] dated 17 June 1999 of the Court of Appeals in CA-G.R. CV No. 35688, which reversed and set aside the Decision[3] dated 25 November 1991 of the Regional Trial Court (RTC) of Pasay City, Branch 119, in the consolidated cases of LRC Case No. LP-553-P (an application for registration of title to real property) and Civil Case No. 6914-P (an action to declare ownership over real property, formerly numbered Pq-8557-P). The Court of Appeals upheld the title of Rosario Bondoc to the disputed property, thus, overturning the finding of the RTC of Pasay City that Maria Q. Cristobal and Dulos Realty & Development Corporation have a registrable title to the same property.

The Contracts

At the core of the controversy in the Petitions at bar is a parcel of unregistered land located in Tungtong, Las Piñas, formerly of the Province of Rizal, now a part of Metro Manila, designated as Lot 1 of Plan Psu-205035, with an area of 19,545 square meters (subject property). It previously formed part of

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[1] *Rollo* (G.R. No. 139047), pp. 33-57; *rollo* (G.R. No. 139365), pp. 14-36.

[2] Penned by Associate Justice Conchita Carpio-Morales (now an Associate Justice of this Court) with Associate Justices Artemon D. Luna and Bernardo P. Abesamis, concurring; *rollo* (G.R. No. 139047), pp. 11-29.

[3] Penned by Judge Aurora P. Navarrete-Reciña; *rollo* (G.R. No. 139047), pp. 124-129.

a bigger parcel of agricultural land[4] first declared in the name of Domingo Lozada (Domingo) in the year 1916 under Tax Declaration No. 2932.[5]

During the lifetime of Domingo, he was married twice. From his first marriage to Hisberta Guevarra in the year 1873,[6] he fathered two children, namely Bernardo and Anatalia. After the death of Hisberta, Domingo married Graciana San Jose in the year 1887[7] and their marriage produced two children, namely Nicomedes and Pablo.

Domingo and Graciana died on 27 February 1930 and 12 August 1941, respectively. On 18 March 1965, Nicomedes and the heirs of his brother Pablo entered into an **Extrajudicial Settlement of the Estate**[8] of their parents Domingo and Graciana. According to the settlement, the entire parcel of agricultural land declared in the name of Domingo[9] was divided into two, Lot 1 and Lot 2, in accordance with the approved subdivision plan Psu-205035. The subject property, *i.e.*, Lot 1, was adjudicated to Nicomedes; while Lot 2 was given to the heirs of Pablo. Nicomedes then declared the subject property in his name in 1965 under Tax Declaration No. 2050.[10]

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[4] There appears to be a discrepancy between the statement of the Court of Appeals and some relevant documents forming part of the records of this case with respect to the total land area of the parcel of land declared in the name of Domingo. The appellate court declared that the said property had a total area of 39,091 square meters [*Rollo* (G.R. No. 139047), p. 12], while in the Deed of Extra-judicial Settlement of Estates filed by the heirs of Domingo by his second marriage, *i.e.*, Nicomedes and the heirs of Pablo, the said property contained a total area of 46,387 square meters (Records, Vol. 1, p. 351).

[5] Exhibit "G" for Applicants Salvador, *et al.*, Records, Vol. 1, p. 162.

[6] Exhibit "F", *id.* at 161.

[7] Exhibit "8" for Oppositors Dulos, Records, Vol. 1, p. 349.

[8] Exhibit "10", *id.* at 351-353.

[9] Exhibits "G and H" for Applicants Salvador, *et al.*, Records, Vol. 1, pp. 162-163.

[10] Exhibit "K" for Reyes, Records, Vol. 2.

On 23 June 1965, Nicomedes executed a **Deed of Conditional Sale**[11] over the subject property in favor of Emma Ver Reyes (Emma), which provided:

That the Vendor [Nicomedes] is the true and lawful owner of a parcel of land situated at Tungtong, Las Pinas, Rizal, more particularly described as follows:

> "A parcel of land (**Lot 1 of plan Psu-205035**), x x x; containing an area of NINETEEN THOUSAND FIVE HUNDRED FOURTY FIVE (19,545) SQUARE METERS, more or less, and still a portion of the land covered by Tax Declaration No. 2304 of Las Pinas, Rizal, in the name of Domingo Lozada, and with a total assessed value of ₱1,860.00."

That the [subject property] is a **paraphernal property of the Vendor** [Nicomedes], the same having been inherited by him from his deceased mother, Graciana San Jose, but was declared for taxation in the name of his deceased father, Domingo Lozada;

That for and in consideration of the sum of FOUR PESOS AND FIFTY CENTAVOS (₱4.50), Philippine Currency, per square meter to be paid by the Vendee to the Vendor, the said Vendor by these presents hereby **SELLS, CEDES, TRANSFERS and CONVEYS by way of CONDITIONAL SALE** the above-described parcel of land together with all the improvements thereon to the said Vendee [Emma], her heirs, assigns and successors, free from all liens and encumbrances, under the following terms and conditions, to wit:

> 1. That the Vendee [Emma] will pay the Vendor [Nicomedes] as follows:
>
> (a). TWENTY FIVE PERCENT (25%) of the total price on the date of the signing of this contract;
>
> (b). The next TWENTY FIVE PERCENT (25%) of the total price upon the issuance of the title for the land described above; and
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> (c). The balance of FIFTY PERCENT (50%) of the total price within one (1) year from the issuance of the said title;

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[11] *Rollo* (G.R. No. 139047), pp. 107-108.

2. That **if the Vendee [Emma] fails to pay the Vendor [Nicomedes] the sums stated in paragraphs 1(b) and 1(c) above within the period stipulated and after the grace period of one (1) month for each payment, this contract shall automatically be null and void and of no effect** without the necessity of any demand, notice or filing the necessary action in court, and **the Vendor [Nicomedes] shall have the full and exclusive right to sell, transfer and convey absolutely the above-described property to any person, but the said Vendor [Nicomedes] shall return to the Vendee [Emma] all the amount paid to him by reason of this contract without any interest upon the sale of the said property to another person**;

3. That the total price shall be subject to adjustment in accordance with the total area of the above-described property that will be finally decreed by the court in favor of the herein Vendor [Nicomedes]; and

4. That **the Vendor [Nicomedes] will execute a final deed of absolute sale covering the said property in favor of the Vendee [Emma] upon the full payment of the total consideration** in accordance with the stipulations above. (Emphases ours.)

The Deed of Conditional Sale was registered in the Registry of Property for Unregistered Lands in August 1965.[12]

It would appear from the records of the case that Emma was only able to pay the first installment of the total purchase price agreed upon by the parties. Furthermore, as will be discussed later on, Nicomedes did not succeed in his attempt to have any title to the subject property issued in his name.

On 14 June 1968, Nicomedes entered into another contract involving the subject property with Rosario D. Bondoc (Rosario). Designated as an **Agreement of Purchase and Sale**,[13] the significant portions thereof states:

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[12] The Court of Appeals cites the specific date as 12 August 1969 (*Rollo*, G.R. No. 139047, p. 13), while the RTC states the date as 13 August 1969 (*Rollo*, G.R. No. 139047, p. 128). The Memorandum of the Spouses Reyes, however, claim that the date of registration was 14 August 1969 (*Rollo*, G.R. No. 139365, p. 99).

[13] Records, Vol. 1, pp. 257-258.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the sum of ONE HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED FIVE PESOS (₱175,905.00) Philippine Currency, which the BUYER [Rosario] shall pay to the SELLER [Nicomedes] in the manner and form hereinafter specified, **the SELLER [Nicomedes] by these presents hereby agreed and contracted to sell all his rights, interests, title and ownership over the parcel of land x x x unto the BUYER [Rosario], who hereby agrees and binds herself to purchase from the former, the aforesaid parcel of land**, subject to the following terms and conditions:

1. Upon the execution of this Agreement, the BUYER [Rosario] shall pay the SELLER [Nicomedes], the sum of FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency.

2. [That] upon the delivery by the SELLER [Nicomedes] to the BUYER [Rosario] of a valid title of the aforesaid parcel of land, free from any and all liens and encumbrances, and the execution of the final Deed of Sale, the BUYER [Rosario] shall pay to the SELLER [Nicomedes], the sum of THIRTY SEVEN THOUSAND SEVEN HUNDRED FIVE PESOS (₱37,705.00) Philippine Currency, and the final balance of ONE HUNDRED TWENTY THREE THOUSAND AND TWO HUNDRED PESOS (₱123,200.00) Philippine Currency, one year from the date of execution of the final deed of sale, all without interest.

3. That **in the event the BUYER [Rosario] fails to pay any amount as specified in Section 2, Paragraph II, then this contract, shall, by the mere fact of non-payment expire itself and shall be considered automatically cancelled, of no value and effect**, and immediately thereafter the SELLER [Nicomedes] shall return to the BUYER [Rosario] the sums of money he had received from the BUYER [Rosario] without any interests and **whatever improvement or improvements made or introduced by the BUYER [Rosario] on the lot being sold shall accrue to the ownership and possession of the SELLER [Nicomedes].**

x x x x x x x x x

6. **The SELLER [Nicomedes] hereby warrants the useful and peaceful possession and occupation of the lot subject matter of this agreement by the BUYER [Rosario]**. (Emphasis ours.)

On 7 March 1969, Nicomedes and Rosario executed a **Joint Affidavit**,[14] whereby they confirmed the sale of the subject property by Nicomedes to Rosario through the Agreement of Purchase and Sale dated 14 June 1968. They likewise agreed to have the said Agreement registered with the Registry of Deeds in accordance with the provisions of Section 194 of the Revised Administrative Code, as amended by Act No. 3344. The Agreement of Purchase and Sale was thus registered on 10 March 1969.[15]

The records of this case show that, of the entire consideration stipulated upon in the Agreement, only the first installment was paid by Rosario. No title to the subject property was ever delivered to her since, at the time of the execution of the above contract, Nicomedes's application for the registration of the subject property was still pending.

Five months thereafter, Nicomedes executed on 10 August 1969 a third contract, a **Deed of Absolute Sale of Unregistered Land**,[16] involving a portion of the subject property measuring 2,000 square meters, in favor of Maria Q. Cristobal (Maria).[17] The relevant terms of the Deed recite:

> THAT I, NICOMEDES J. LOZADA, of legal age, Filipino citizen, married and a resident of Las Piñas, Rizal, Philippines, for and in consideration of the sum of TWENTY FIVE THOUSAND (₱25,000.00) PESOS, Philippine currency, receipt of which is hereby acknowledged to my full and entire satisfaction, do hereby **sell, transfer and convey** to MARIA Q. CRISTOBAL, likewise of legal age, Filipino citizen, married to Juan [Dulos], and a resident of 114 Real Street, Las Piñas, Rizal, Philippines, her heirs, executors, administrators and assigns, **TWO THOUSAND SQUARE METERS (2,000) for an easement of way of a parcel of unregistered land**

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[14] *Rollo* (G.R. No. 139047), p. 262.

[15] *Id.* at 261.

[16] *Id.* at 268-269.

[17] Maria Q. Cristobal is married to Juan B. Dulos, President of Dulos Realty and Development Corporation, and is sometimes referred to as Maria Q. Cristobal Dulos.

situated in the Barrio of Tungtong, Municipality of Las Piñas, Province of Rizal, Philippines, exclusively belonging to and possessed by me, and more particularly described as follows:

> "A parcel of land described under Tax Declaration No. 9575 (Lot No. 1, Psu 205035), situated in the Barrio of Tuntong, Municipality of Las Piñas, Province of Rizal, Philippines. xxx [C]ontaining an area of 1.9545 hectares, more or less." (Emphasis ours.)

Nicomedes passed away on 29 June 1972. The Deed of Absolute Sale of Unregistered Land between Nicomedes and Maria was registered only on 8 February 1973,[18] or more than seven months after the former's death.

On 10 August 1979, Nicomedes's heirs, namely, the four children from his first marriage,[19] the six children from his second marriage,[20] and his surviving second spouse Genoveva Pallera *Vda. De* Lozada, executed a **Deed of Extrajudicial Settlement of the Estate of the Late Nicomedes J. Lozada with Ratification of a Certain Deed of Absolute Sale of Unregistered Land**.[21] The heirs declared in said Deed of Extrajudicial Settlement that the only property left by Nicomedes upon his death was the subject property. They also ratified therein the prior sale of a portion of the subject property made by Nicomedes in favor of Maria, but they clarified that the actual area of the portion sold as presented in the plan was 2,287 square meters, not 2,000 square meters. After excluding the portion sold to Maria, the heirs claimed equal *pro indiviso* shares in the remaining 17,258 square meters of the subject property.

On 30 July 1980, Nicomedes's heirs[22] collectively sold, for the sum of ₱414,192.00, their shares in the subject property in

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[18] *Rollo* (G.R. No. 139047), p. 269.

[19] Adrilina Lozada *Vda. De* Baltasar, Servando Lozada, Presentacion Lozada Pagtalunan, and Lolita Lozada Feliciano.

[20] Teresita Lozada, Danilo Lozada, Evelyn Lozada, Josephine Lozada, Maria Victoria Lozada and Grace Lozada.

[21] Exhibit "2" for Oppositors Dulos, Records, Vol. 1, pp. 334-338.

[22] With the exception of Danilo Lozada.

favor of Dulos Realty and Development Corporation (Dulos Realty), as represented by its President Juan B. Dulos, *via* a **Deed of Absolute Sale of an Unregistered Land.**[23] The said Deed of Absolute Sale dated 30 July 1980, however, was not registered.

The Cases

On 11 April 1966, after executing the Deed of Conditional Sale in favor of Emma on 23 June 1965, Nicomedes filed an application for the registration of the subject property with the then Court of First Instance (CFI) of Pasig, docketed as **LRC Case No. N-6577**. The grandchildren of Domingo by his former marriage[24] opposed the application for registration and Emma and her husband Ramon filed their intervention.

Sometime in 1973, following the execution in her favor of the Agreement of Purchase and Sale dated 14 June 1968 and Joint Affidavit dated 7 March 1969, Rosario filed a motion to intervene in LRC Case No. N-6577 then pending before the CFI of Pasig; however, her motion was denied by the CFI of Pasig, in an Order dated 2 June 1973.[25] Rosario no longer appealed from the order denying her motion to intervene in said case.

In view of the conflicting claims over the subject property, the CFI of Pasig dismissed without prejudice LRC Case No. N-6577 on 21 November 1975 and ordered the parties therein, namely, the applicant Nicomedes and the oppositors/intervenors, to litigate first the issues of ownership and possession.[26]

Five years later, on 27 June 1980, Domingo's grandchildren from his first marriage, Dominador, *et al.*,[27] filed an Application

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[23] *Rollo* (G.R. No. 139047), pp. 270-274.

[24] Dominador Salvador, Emilio Fuerte, Trinidad Lozada Castillo, Rosalina Padlan and Aurora Tolentino

[25] Exhibit "10" for Oppositor Bondoc, Records, Vol. 2, p. 20.

[26] Records, Vol. 1, pp. 217-218.

[27] Dominador Salvador, Emilio Fuerte, Trinidad Lozada Castillo, Rosalina Padlan and Aurora Tolentino

for Registration[28] of title to the subject property with the CFI of Rizal, docketed as **LRC Case No. LP-553-P**. In their Application, Dominador, *et al.*, alleged, *inter alia*, that they were the owners of the subject property by virtue of inheritance; they were the actual occupants of the said property; and, other than Emma, they had no knowledge of any encumbrance or claim of title affecting the same.

On 6 November 1980, Rosario, assisted by her husband Mariano Bondoc, invoking the Agreement of Purchase and Sale executed in her favor by Nicomedes on 14 June 1968, filed a Complaint[29] before the CFI of Rizal for the declaration in her favor of ownership over the subject property, with an application for a temporary restraining order or preliminary injunction, against Trinidad Lozada (one of Domingo's heirs from his first marriage who applied for registration of the subject property in LRC Case No. LP-553-P) and two other persons, who allegedly trespassed into the subject property. Rosario's complaint was docketed as **Civil Case No. Pq-8557-P**.

On 4 August 1981, the parties agreed to have LRC Case No. LP-553-P (the application for land registration of Dominador, *et al.*) consolidated with Civil Case No. Pq-8557-P (the action for declaration of ownership of Rosario).[30]

By subsequent events,[31] and in consideration of the location of the subject property in Las Piñas, LRC Case No. LP-553-P

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[28] *Rollo* (G.R. No. 139047), pp. 109-110.

[29] *Id.* at 111-114.

[30] Records, Vol. 1, p. 65.

[31] The CFI of Rizal dismissed Civil Case No. Pq-8557-P on 11 January 1984 in view of Rosario's alleged failure to exert the proper efforts in prosecuting her case (Exhibit "10" for Oppositor Bondoc, Records, Vol. 2, p. 60). However, the CFI of Rizal later on, on 29 February 1984, ordered that the case be referred instead to the RTC of Makati, as the subject property was located in Las Piñas (Exhibit "10" for Oppositor Bondoc, Records, Vol. 2, p. 61). The case was docketed as Civil Case No. 6914 before the RTC of Makati. The RTC of Makati likewise dismissed without prejudice Civil Case No. 6914 on 29 May 1985 as Rosario supposedly failed to prosecute her case despite the lapse of four years since the institution thereof (Exhibit "10" for Oppositor

and Civil Case No. Pq-8557-P, reinstated as **Civil Case No. 6914-P**, were finally transferred to and decided by the RTC of Pasay City.

In its Decision dated 25 November 1991, the RTC of Pasay City, Branch 119, disposed of the cases thus:

> WHEREFORE, considering all the foregoing, the court denies the application of Dominador Salvador, Sr. *et al.*, having no more right over the land applied for, dismisses Civil Case No. Pq-8557-P now 6914 for lack of merit, and hereby declares **Maria Cristobal Dulos and Dulos Realty and Development Corporation** to have a registrable title, confirming title and decreeing the registration of Lot 1 PSU-205035 containing a total area of 19,545 square meters, 2,287 square meters of which appertains to Maria Cristobal Dulos married to Juan Dulos and the remaining portion, in favor of Dulos Realty and Development Corporation, without pronouncement as to costs.[32] (Emphasis ours.)

In so ruling, the RTC rationalized that the subject property constituted Domingo's share in the conjugal properties of his second marriage to Graciana San Jose and, therefore, properly pertained to Nicomedes as one of his sons in said marriage. Being Domingo's heirs from his first marriage, Dominador, *et al*., were not entitled to the subject property.

The lower court also found that neither Emma nor Rosario acquired a better title to the subject property as against Maria and Dulos Realty. No final deed of sale over the subject property was executed in favor of Emma or Rosario, while the sales of portions of the same property in favor of Maria and of the rest to Dulos Realty were fully consummated as evidenced by the

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Bondoc, Records, Vol. 2, p. 62). Rosario filed with the RTC of Makati a Manifestation (Exhibit "10" for Oppositor Bondoc, Records, Vol. 2, pp. 63-64) explaining that she did not pursue her case before the said court since she already received an Order from the RTC of Pasay City setting her case for hearing. Pursuant to Rosario's Manifestation, the RTC of Makati ordered on 1 July 1985 that the records of the case be forwarded to the RTC of Pasay City, Branch 112 (Exhibit "10" for Oppositor Bondoc, Records, Vol. 2, p. 68). The cases were re-raffled to Branch 119 of the same court.

[32] *Rollo* (G.R. No. 139047), p. 129.

absolute deeds of sale dated 10 August 1969 and 30 July 1980, respectively.

Dominador, *et al.*, Emma and her spouse Ramon Reyes (Ramon), and Rosario separately appealed to the Court of Appeals the foregoing Decision dated 25 November 1991 of the RTC of Pasay City.[33] Their consolidated appeals were docketed as CA-G.R. CV No. 35688.

Dominador, *et al.*, however, moved to withdraw their appeal in light of the amicable settlement they entered into with Maria and Dulos Realty.[34] In a Resolution dated 24 September 1992,[35] the Court of Appeals granted their Motion to Withdraw Appeal. Dominador, *et al.*, later filed a motion to withdraw their earlier Motion to Withdraw Appeal, but this was denied by the Court of Appeals in a Resolution dated 15 January 1993.[36]

In their respective Briefs before the appellate court,[37] Emma and Rosario both faulted the RTC of Pasay City for awarding the subject property to Maria and Dulos Realty. They each claimed entitlement to the subject property and asserted the superiority of their respective contracts as against those of the others.

On 17 June 1999, the Court of Appeals rendered its assailed Decision, ruling as follows:

> As gathered above, both contracts [entered into with Emma and Rosario] gave Nicomedes, as vendor, the right to unilaterally rescind the contract the moment the buyer failed to pay within a fixed period (*Pingol v. CA*, 226 SCRA 118), after which he, as vendor, was obliged to return without interest the sums of money he had received from the buyer (under the Deed of Conditional Sale [to Emma], upon the sale of the property to another). Additionally, under the Agreement of Purchase and Sale [with Rosario], the vendor, in case of rescission, would become the owner and entitled to the possession of whatever improvements introduced by the buyer.

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[33] CA *rollo*, p. 160; Records, Vol. 1, pp. 472-473, 482-483.

[34] CA *rollo*, pp. 17-18.

[35] *Id.* at 128-129.

[36] *Id.* at 47.

[37] *Rollo* (G.R. No. 139047), pp. 132-152, 159-169.

Under the Deed of Conditional Sale [to Emma], there was no provision that possession would be, in case of rescission, returned to the vendor, thereby implying that possession remained with him (vendor). Such being the case, it appears to be a contract to sell. Whereas under the Agreement of Purchase and Sale [with Rosario], the provision that in case of rescission, any improvements introduced by the vendee would become the vendor's implies that possession was transferred to the vendee and, therefore, it appears to be a contract of sale.

That the Agreement of Purchase and Sale [with Rosario] was a contract of sale gains light from the Joint Affidavit subsequently executed by Rosario and Nicomedes stating that "an Agreement of Purchase and Sale wherein the former (Nicomedes J. Lozada) sold to the latter (Rosario D. Bondoc) a parcel of land" had been executed but that the lot "not having been registered under Act No. 496 nor under the Spanish Mortgage Law, the parties hereto have agreed to register the Agreement of Purchase and Sale ... under the provision of Section 194 of the Revised Administrative Code, as amended by Act No. 3344."

Rosario registered the Agreement of Purchase and Sale alright on March 10, 1969. She paid taxes on the lot from 1980 – 1985. She fenced the lot with concrete and hollow blocks. And apart from opposing the land registration case, she filed a complaint against Trinidad, *et al*., for declaration ownership.

Article 1371 of the Civil Code provides:

> "Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

From the provisions of the Agreement of Purchase and Sale [to Rosario] and the subsequent acts of the parties then including the execution of the Joint Affidavit by Rosario and Nicomedes stating that "an Agreement of Purchase and Sale wherein the former (Nicomedes...) sold to the latter (Rosario...) a parcel of land", had been executed, there is no mistaking that the lot was sold to Rosario xxx.

Anent the effect of Rosario's registration of the Agreement of Purchase and Sale on Emma's contract involving the same lot, Act No. 3344 (Amending Sec. 194 of the Administrative Code [Recording

of instruments or deeds relating to real estate not registered under Act No. 496 or under the Spanish Mortgage Law]) provides that any registration made under Sec. 194 of the Administrative Code "shall be understood to be without prejudice to a third party who has a better right."

"Better right," however, was not defined by law.

But author Narciso Peña is inclined to concur that "better right" should refer to a "right which must have been acquired by a third party independently of the unregistered deed, such as, for instance, title by prescription, and that it has no reference to rights acquired under that unregistered deed itself," he citing *Nisce v. Milo*, G.R. No. 425016, January 17, 1936 Unrep. 62 Phil. 976 x x x.

Given the fact that the contract in Emma's favor is a mere contract to sell, as against Rosario's contract which, as demonstrated above is one of sale and, in any event, independently of Emma's contract to sell, she has no claim of a better right unlike Rosario who has, not to mention the fact that she (Rosario) registered her contract earlier than Emma's, Rosario must prevail.

The lot having been previously sold to Rosario, there was no lot or portion thereof to be later sold to Maria and to Dulos Realty in 1979 and 1980, respectively.

WHEREFORE, the appealed Joint Decision is hereby REVERSED and SET ASIDE and another is rendered confirming the title of **Rosario D. Bondoc** over subject lot, Lot 1, PSU-205035 containing an area of 19,545 sq.m., ordering its registration in her name, and dismissing the claims of ownership of all other claimants. Appellees Maria Cristobal and Dulos Realty and Development Corporation and all other claimants to subject land including all persons claiming under them are hereby ordered to vacate and restore possession to appellant Rosario D. Bondoc.

Upon issuance of title to subject lot, appellant Rosario D. Bondoc is ordered to pay the balance of the purchase price to the heirs of Nicomedes Lozada in accordance with the Agreement of Purchase and Sale executed by the latter in her favor. This judgment is without prejudice to the rights which Emma Ver Reyes and Maria Cristobal and Dulos Realty and Development Corporation might have against the estate or surviving heirs of Nicomedes Lozada to the extent that the latter was/were benefited.[38] (Emphasis ours.)

[38] *Id.* at 26-29.

Aggrieved, Emma and her husband Ramon,[39] as well as Maria and Dulos Realty,[40] without seeking reconsideration of the appellate court's decision, filed directly before this Court separate Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 139047 and G.R. No. 139365, respectively, assailing the 17 June 1999 Decision of the appellate court. Upon the manifestation and motion of Maria and Dulos Realty,[41] the two Petitions were ordered consolidated by this Court in a Resolution[42] dated 13 December 1999.

In their Petition, Emma and her husband Ramon raise the following issues:

I.

WHETHER OR NOT OWNERSHIP OF THE DISPUTED LOT WAS VALIDLY AND LEGALLY TRANSFERRED TO EMMA VER REYES.

II.

WHETHER OR NOT MARIA CRISTOBAL DULOS AND DULOS REALTY AND DEVELOPMENT CORPORATION ARE PURCHASERS IN BAD FAITH.

III.

WHETHER OR NOT EMMA VER REYES AND RAMON REYES ARE BARRED BY PRESCRIPTION OR LACHES.

IV.

WHETHER OR NOT THE COURT OF APPEALS PATENTLY AND GRAVELY ERRED IN CONFIRMING THE TITLE OF ROSARIO BONDOC OVER THE DISPUTED LOT, ORDERING ITS REGISTRATION IN HER NAME AND DISMISSING THE CLAIM OF EMMA VER REYES AND RAMON REYES.[43]

Maria and Dulos Realty, on the other hand, submitted in their Petition the following issues for consideration of this Court:

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[39] *Id.* at 33-57.

[40] *Rollo* (G.R. No. 139365), pp. 14-36.

[41] *Rollo* (G.R. No. 139047), pp. 226-228.

[42] *Id.* at 229-230.

[43] *Rollo* (G.R. No. 139365), p. 101.

I.

WHETHER OR NOT BONDOC'S AGREEMENT OF PURCHASE AND SALE AND SPOUSES REYES DEED OF CONDITIONAL SALE ARE REGISTRABLE ABSOLUTE CONVEYANCES IN FEE SIMPLE TO SERVE AS BASIS FOR AN AWARD AND REGISTRATION OF THE SUBJECT LOT IN THEIR FAVOR.

II.

WHETHER OR NOT RESPONDENTS BONDOC AND THE REYESES ARE BARRED BY LACHES AND/OR PRESCRIPTION.

III.

WHETHER OR NOT RESPONDENT BONDOC IS BARRED BY *RES JUDICATA*.[44]

The fundamental issue that the Court is called upon to resolve is, in consideration of all the contracts executed by Nicomedes and/or his heirs involving the subject property, which party acquired valid and registrable title to the same.

Emma and Ramon contend that although the subject property was conditionally sold to them by Nicomedes, the "conditionality" of the sale did not suspend the transfer of ownership over the subject property from Nicomedes to Emma. Even though Nicomedes may automatically rescind the contract in case of non-payment by Emma of the balance of the purchase price, it did not bar the transfer of title to the subject property to Emma in the meantime. Emma and Reyes likewise claim that there was constructive delivery of the subject property to Emma, inasmuch as the Deed of Conditional Sale in her favor was a public instrument. Furthermore, Emma was in possession of the subject property in the concept of owner since she had been paying realty taxes for the same, albeit in the name of Nicomedes (in whose name it was declared), from the time of the sale in 1965 until 1972. Emma and Ramon also assert that Maria and Dulos Realty were in bad faith as the sales of the subject property in their favor, on 10 August 1969 and 30 July 1980, respectively, occurred only after the filing of the cases

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

involving the property[45] and the registration of the sale to Emma. Finally, Emma and Ramon maintain that the Court of Appeals erred in ruling that the contract in favor of Rosario was a contract of sale for the sole reason that actual possession of the property was already transferred to the latter.

For their part, Maria and Dulos Realty point out that Emma and Rosario are not holders of absolute deeds of conveyances over the subject property, which would have entitled them to register the same in their respective names. They further buttress their alleged superior right to the subject property based on the execution of two notarized documents of sale in their favor, which constituted symbolic and constructive delivery of the subject property to them. Maria and Dulos Realty likewise assert that the claims of Emma and Rosario are already barred by laches and prescription because they only decided to enforce their respective rights over the subject property after Domingo's heirs filed with the CFI of Rizal on 27 June 1980 an application for registration of the subject property, docketed as LRC Case No. LP-553-P, notwithstanding their knowledge of Nicomedes's death on 29 June 1972. Lastly, Maria and Dulos Realty aver that Rosario is already barred by *res judicata* since her motion to intervene in LRC Case No. 6577, the case instituted by Nicomedes to register the subject property, was denied by the CFI of Pasig. The dismissal of Rosario's motion to intervene in the case for registration of the subject property already became final and executory, thus, barring Rosario from pursuing her claim over the same.

This Court's Ruling

After a conscientious review of the arguments and evidence presented by the parties, the Court finds that the Deed of Conditional Sale between Nicomedes and Emma and the Agreement of Purchase and Sale between Nicomedes and Rosario were both mere **contracts to sell** and did not transfer ownership or title to either of the buyers in light of their failure to fully pay for the purchase price of the subject property.

[45] LRC Case No. N-6577, which was filed on 11 April 1966, and LRC Case No. LP-553-P, which was filed on 27 June 1980.

In *Coronel v. Court of Appeals*,[46] this Court effectively provided the guidelines for differentiating between a contract to sell and a contract of sale, to wit:

> The Civil Code defines a **contract of sale**, thus:
>
> > Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> Sale, by its very nature, is a **consensual contract because it is perfected by mere consent**. The essential elements of a contract of sale are the following:
>
> a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
>
> b) Determinate subject matter; and
>
> c) Price certain in money or its equivalent.
>
> Under this definition, a Contract to Sell may not be considered as a Contract of Sale because the first essential element is lacking. In a **contract to sell**, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer. In *Roque vs. Lapuz* (96 SCRA 741 [1980]), this Court had occasion to rule:
>
> > Hence, We hold that the contract between the petitioner and the respondent was a contract to sell where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious,

[46] 331 Phil. 294, 308-311 (1996).

but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force.

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:

> Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.
>
> An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while **expressly reserving the ownership of the subject property** despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a **conditional contract of sale** where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated (cf. *Homesite and Housing Corp. vs. Court of Appeals*, 133 SCRA 777 [1984]). However, **if the suspensive condition is fulfilled, the contract of sale is thereby perfected**, such that if there had already been previous delivery of the property subject of the sale to the buyer, **ownership thereto automatically transfers to the buyer by operation of law** without any further act having to be performed by the seller.

In a **contract to sell, upon the fulfillment of the suspensive condition** which is the full payment of the purchase price, **ownership will not automatically transfer to the buyer** although the property may have been previously delivered to him. The **prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.** (Emphases ours.)

Also in *Coronel v. Court of Appeals*, the Court highlighted the importance of making the distinction between a contract to sell and a contract of sale:

> It is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a **contract to sell**, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer.
>
> In a **conditional contract of sale**, however, upon the fulfillment of the suspensive condition, the sale becomes absolute and this will definitely affect the seller's title thereto. In fact, if there had been previous delivery of the subject property, the seller's ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer to any third person. Applying Article 1544 of the Civil Code, such second buyer of the property who may have had actual or constructive knowledge of such defect in the seller's title, or at least was charged with the obligation to discover such defect, cannot be a registrant in good faith. Such second buyer cannot defeat the first buyer's title. In case a title is issued to the second buyer, the first buyer may seek reconveyance of the property subject of the sale.[47]

Even in the absence of an express stipulation to such effect, the intention of the parties to execute a contract to sell may be implied from the provisions of the contract. While Article 1478[48] of the Civil Code recognizes the right of the parties to agree that the ownership of the thing shall not pass to the purchaser until he has fully paid the price therefore, the

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[47] *Id.* at 311.

[48] Art. 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price.

same statutory provision does not require that such be expressly stipulated in the contract.

In *Adelfa Properties, Inc. v. Court of Appeals*,[49] the Court ruled that since the contract between the parties therein did not contain a stipulation on reversion or reconveyance of the property to the seller in the event that the buyer did not comply with its obligation, it may legally be inferred that the parties never intended to transfer ownership to the buyer prior to the completion of the payment of the purchase price. Consequently, the contract involved in the aforementioned case was a mere contract to sell.

An agreement is also considered a contract to sell if there is a stipulation therein giving the vendor the rights to unilaterally rescind the contract the moment the vendee fails to pay within a fixed period and to consequently open the subject property anew to purchase offers.[50] In the same vein, where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell.[51]

Viewed in light of the foregoing pronouncements, the Deed of Conditional Sale executed by Nicomedes in favor of Emma on 23 June 1965 is unmistakably a mere contract to sell. The Court looks beyond the title of said document, since the denomination or title given by the parties in their contract is not conclusive of the nature of its contents.[52] In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued.[53] If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If

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[49] 310 Phil. 623 (1995).

[50] *Philippine National Bank v. Court of Appeals*, 330 Phil. 1048, 1070-1071 (1996).

[51] *Id*.

[52] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, 23 January 2006, 479 SCRA 462, 467-468.

[53] *Id*.

the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[54]

A simple reading of the terms of the 23 June 1965 Deed of Conditional Sale readily discloses that it contains stipulations characteristic of a contract to sell. It provides for the automatic cancellation of the contract should Emma fail to pay the purchase price as required therein; and, in such an event, it grants Nicomedes the exclusive right to thereafter sell the subject property to a third person. As in *Adelfa Properties*, the contract between Nicomedes and Emma does not provide for reversion or reconveyance of the subject property to Nicomedes in the event of nonpayment by Emma of the purchase price. More importantly, the Deed in question clearly states that Nicomedes will issue a final deed of absolute sale only upon the full payment of the purchase price for the subject property. Taken together, the terms of the Deeds reveal the evident intention of the parties to reserve ownership over the subject property to Nicomedes pending payment by Emma of the full purchase price for the same.

While the Deed of Conditional Sale dated 23 June 1965 was indeed contained in a public instrument, it did not constitute constructive delivery of the subject property to Emma in view of the contrary inference in the Deed itself that the ownership over the subject property was reserved by Nicomedes.[55] Moreover, other than her claim that she paid the realty taxes on the subject property, Emma did not present any evidence that she took actual and physical possession of the subject property at any given time.

This Court also finds that, contrary to the ruling of the Court of Appeals, the Agreement of Purchase and Sale executed by Nicomedes in favor of Rosario on 14 June 1968 is likewise a mere contract to sell.

The Agreement itself categorically states that Nicomedes only undertakes to sell the subject property to Rosario upon the

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[54] NEW CIVIL CODE, Article 1370.

[55] See *Philippine Suburban Development Corporation v. Auditor General*, 159 Phil. 998, 1007-1008 (1975).

payment of the stipulated purchase price and that an absolute deed of sale is yet to be executed between the parties. Thus:

NOW, THEREFORE, for and in consideration of the foregoing premises and of the sum of ONE HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED FIVE PESOS (₱175,905.00) Philippine Currency, which the BUYER shall pay to the SELLER in the manner and form hereinafter specified, **the SELLER by these presents hereby agreed and contracted to sell all his rights, interests, title and ownership over the parcel of land xxx unto the BUYER, who hereby agrees and binds herself to purchase from the former, the aforesaid parcel of land**, subject to the following terms and conditions:

1. Upon the execution of this Agreement, the BUYER shall pay the SELLER, the sum of FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency.

2. That upon the delivery by the SELLER to the BUYER of a valid title of the aforesaid parcel of land, free from any and all liens and encumbrances, and **the execution of the final Deed of Sale**, the BUYER shall pay to the SELLER, the sum of THIRTY SEVEN THOUSAND SEVEN HUNDRED FIVE PESOS (₱37,705.00) Philippine Currency, and the final balance of ONE HUNDRED TWENTY THREE THOUSAND AND TWO HUNDRED PESOS (₱123,200.00) Philippine Currency, one year from the date of the execution of the final deed of sale, all without interest.[56] (Emphases ours.)

The Agreement additionally grants Nicomedes the right to automatically cancel the same in the event of nonpayment by Rosario of any of the specified sums therein and any improvement introduced in the subject property shall thereby accrue to Nicomedes, *viz*:

3. That **in the event the BUYER fails to pay any amount as specified in Section 2, Paragraph II, then this contract, shall, by the mere fact of non-payment expire itself and shall be considered automatically cancelled, of no value and effect**, and immediately thereafter the SELLER shall return to the buyer the sums of money he had received from the BUYER without any interests and **whatever improvement or**

[56] Records, Vol. 1, p. 257.

improvements made or introduced by the BUYER on the lot being sold shall accrue to the ownership and possession of the SELLER.[57]

As can be clearly read above, only the rights to possess the property and construct improvements thereon have been evidently given to Rosario. The provisions of the Agreement do not in any way indicate that the ownership of the subject property has likewise been transferred to Rosario. That Nicomedes shall appropriate the improvements as his own should Rosario default in her payment of the purchase price only further supports the conclusion that title to the subject property itself still remained with Nicomedes.

The Court concludes that the Deed of Conditional Sale in favor of Emma and the Agreement of Purchase and Sale in favor of Rosario were mere contracts to sell. As both contracts remained unperfected by reason of the non-compliance with conditions thereof by all of the parties thereto, Nicomedes can still validly convey the subject property to another buyer. This fact, however, is without prejudice to the rights of Emma and Rosario to seek relief by way of damages against the estate and heirs of Nicomedes to the extent that the latter were benefited by the sale to succeeding buyers.[58]

Thus, the Deeds of Absolute Sale in favor of Maria and Dulos Realty were the only conveyances of the subject property in this case that can be the source of a valid and registrable title. Both contracts were designated as absolute sales and the provisions thereof leave no doubt that the same were true contracts of sale. The total considerations for the respective portions of the subject property were fully paid by the buyers and no conditions whatsoever were stipulated upon by the parties as regards the transmission of the ownership of the said property to the said buyers.

The fact that Rosario was the first among the parties to register her contract in the Registry of Property for Unregistered Lands on 10 March 1969 is of no moment.

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[57] *Id.*

[58] See *Coronel v. Court of Appeals, supra* note 46.

Act No. 3344,[59] which amended Section 194 of the Administrative Code, enunciates that any registration made under Section 194 of the Administrative Code "shall be understood to be without prejudice to a third party who has a better right."

In this case, Maria and Dulos Realty acquired their title to the property in separate deeds of absolute sale executed in their favor by Nicomedes and his heirs. Upon the execution of these deeds, the ownership of the subject property was vested unto the said buyers instantly, unlike the contracts to sell executed in favor of Emma and Rosario. Consequently, the rights to the subject property of Maria and Dulos Realty, acquired through the contracts of sale in their favor, are undeniably better or superior to those of Emma or Rosario, and can thus be confirmed by registration.

In sum, this Court recognizes the valid and registrable rights of Maria and Dulos Realty to the subject property, but without prejudice to the rights of Emma and Rosario to seek damages against the estate and heirs of Nicomedes.

WHEREFORE, premises considered, the Petition in G.R. No. 139047 is *DENIED*, while the Petition in G.R. No. 139365 is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 35688 dated 17 June 1999 is *SET ASIDE* and the Decision dated 25 November 1991 of the Regional Trial Court of Pasay City, Branch 119, is *REINSTATED*. No costs.

SO ORDERED.

Tinga,[*] *Velasco, Jr.,*[*] *Nachura*, and *Reyes, JJ.*, concur.

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[59] An Act to amend section one hundred and ninety-four of the Administrative Code, as amended by Act Numbered Two thousand eight hundred and thirty-seven, concerning the recording of instruments relating to land not registered under Act Numbered four hundred and ninety-six, entitled "The Land Registration Act," and fixing the fees to be collected by the register of deeds for instruments recorded under said Act.

[*] Per Special Order No. 517, dated 27 August 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justices Dante O. Tinga and Presbitero J. Velasco, Jr. to replace Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez, who are on official leave.

THIRD DIVISION

[G.R. No. 150635. September 11, 2008]

DR. ROSALINA G. HILARIO, *petitioner, vs.* **MODESTO PRUDENTE, CRISANTO PRUDENTE and REMEDIOS PRUDENTE-PUNO,** *respondents.*

SYLLABUS

REMEDIAL LAW; DOCTRINE OF PRIMARY JURISDICTION; COURTS PRECLUDED FROM RESOLVING CONTROVERSY OVER WHICH HAS INITIALLY BEEN LODGED WITH THE DEPARTMENT OF AGRARIAN REFORM (DAR); CASE AT BAR. — The finding of the Regional Trial Court (RTC), which was affirmed by the Court of Appeals (CA), was that the controversy between the parties pertains to or arises from an agrarian relationship and/or the implementing law thereof. The subject landholding was placed under the Comprehensive Agrarian Reform Program (CARP) pursuant to a notice of coverage and raised therein was the issue of identification of the respondents as farmer-beneficiaries of said landholding. Petitioner protested the identification of the respondents as farmer-beneficiaries made by the Municipal Agrarian Reform Office (MARO) which was denied by the Provincial Agrarian Reform Office (PARO). After the denial of her protest, petitioner filed the ejectment case with the Municipal Trial Court (MTC). Given these undisputed facts, petitioner cannot now impugn the jurisdiction of the DAR or the DARAB over the controversy considering the doctrine of primary jurisdiction. We take the occasion to reiterate what has been explained in *Bautista v. Mag-isa Vda. de Villena*: The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction has initially been lodged with an administrative body of special competence. For agrarian reform cases, jurisdiction is vested in the Department of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB). Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the

implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. This law divested the regional trial courts of their general jurisdiction to try agrarian reform matters. Under Republic Act 6657, the DAR retains jurisdiction over all agrarian reform matters. The pertinent provision reads: Section 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. It is of no moment whether a tenancy relationship existed between the parties or whether proof thereof was adduced by the parties. The case filed with the MTC clearly concerned an agrarian dispute involving the implementation of the CARP which the petitioner was fully aware of. It was obvious that the petitioner filed the ejectment suit with the MTC in order to thwart the unfavorable ruling she obtained from the PARO. Such legal maneuvering cannot be countenanced.

APPEARANCES OF COUNSEL

Bonifacio L. Hilario for petitioner.
Rexie M. Maristela for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 53348, affirming the Decision[2] of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 80, Morong, Rizal, which ruled that the Municipal

[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, concurring; *rollo*, pp. 53-58.

[2] Penned by Judge Reynaldo G. Ros, *id.* at 44-45.

Trial Court (MTC), Tanay, Rizal did not have jurisdiction over the case.

The facts are as follows:

Dr. Rosalina G. Hilario is the registered owner of an agricultural land with an area of 10.2048 hectares situated in *Barangay* Sampaloc, Tanay, Rizal, covered by Transfer Certificate of Title No. M-5757. By virtue of a Notice of Coverage dated September 1, 1997, the Municipal Agrarian Reform Office (MARO) of Sampaloc, Tanay, Rizal declared 5.2048 hectares of said parcel of land under the Comprehensive Agrarian Reform Program (CARP) of the government. Herein respondents Modesto Prudente, Crisanto Prudente and Remedios Prudente-Puno, together with Benito Prudente, were identified as potential farmer-beneficiaries on the basis of their actual and physical possession/ tillage of the subject property.

Petitioner filed a protest to oppose the inclusion of her land in the CARP and the identification of the respondents and Benito Prudente as farmer-beneficiaries, averring that they were neither tenants nor occupant-tillers of the subject property. The protest was denied by the Provincial Agrarian Reform Officer (PARO) in an Order dated February 3, 1998.

On May 28, 1998, the petitioner filed an action for forcible entry with prayer for preliminary injunction with the MTC, alleging that the respondents entered the land and committed depredations thereon by cutting ipil-ipil and bamboo trees and built a house without the knowledge and consent of the petitioner and over the vigorous objection of her caretaker.[3]

On January 11, 1999, the MTC ruled in favor of the petitioner.[4] The decretal portion of the Decision reads as follows:

WHEREFORE, judgment is hereby rendered -

(1) Ordering defendants to vacate the subject property and to peacefully surrender possession thereof to the plaintiff;

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[3] *Rollo,* pp. 21-25.

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

(2) Ordering the defendants, jointly and severally, to pay plaintiff the following:

(a) ₱2,000.00 as reasonable monthly rental for the use and occupation of the subject property commencing February 1998 until defendants shall have vacated the property;

(b) ₱10,000.00 as attorney's fees plus ₱1,000.00 for every court appearance;

(c) Costs of suit.[5]

On appeal, the RTC however found that "from the facts, it is clear that there exists an agrarian dispute between the parties. Consequently, pursuant to Section 50 of Republic Act No. 6557, which reiterates Section 17 of Executive Order No. 229, the Department of Agrarian Reform shall have exclusive and original jurisdiction over all matters involving the implementation of agrarian reform."[6] Thus, the RTC declared:

WHEREFORE, the decision of the Municipal Trial Court is reversed for lack of jurisdiction, and the case [instead be] forwarded to the Department of Agrarian Reform for proper disposition.[7]

A petition for review was filed with the CA which was denied.[8] Petitioner now comes to this Court contending that:

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 80, MORONG, RIZAL, WHICH RULED THAT THE MUNICIPAL TRIAL COURT DID NOT HAVE JURISDICTION OVER THE FORCIBLE ENTRY CASE FILED BY THE PETITIONER AGAINST THE RESPONDENTS.

Petitioner maintains that the inferior court had jurisdiction over the case considering that there was no evidence adduced to prove that there is a tenancy relationship between the parties.

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[5] *Id*. at 35.

[6] *Id*. at 45.

[7] *Id*.

[8] *Id*. at 57.

Petitioner's contention is untenable.

The finding of the RTC, which was affirmed by the CA, was that the controversy between the parties pertains to or arises from an agrarian relationship and/or the implementing law thereof. The subject landholding was placed under the CARP pursuant to a notice of coverage and raised therein was the issue of identification of the respondents as farmer-beneficiaries of said landholding. Petitioner protested the identification of the respondents as farmer-beneficiaries made by the MARO which was denied by the PARO. After the denial of her protest, petitioner filed the ejectment case with the MTC. Given these undisputed facts, petitioner cannot now impugn the jurisdiction of the DAR or the DARAB over the controversy considering the doctrine of primary jurisdiction. We take the occasion to reiterate what has been explained in *Bautista v. Mag-isa Vda. de Villena:*[9]

> The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction has initially been lodged with an administrative body of special competence. For agrarian reform cases, jurisdiction is vested in the Department of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB).
>
> Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. This law divested the regional trial courts of their general jurisdiction to try agrarian reform matters.
>
> Under Republic Act 6657, the DAR retains jurisdiction over all agrarian reform matters. The pertinent provision reads:
>
> > Section 50. *Quasi-Judicial Powers of the DAR*. – The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive

[9] G.R. No. 152564, September 13, 2004, 438 SCRA 259, 262-263.

jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.

It is of no moment whether a tenancy relationship existed between the parties or whether proof thereof was adduced by the parties. The case filed with the MTC clearly concerned an agrarian dispute involving the implementation of the CARP which the petitioner was fully aware of. It was obvious that the petitioner filed the ejectment suit with the MTC in order to thwart the unfavorable ruling she obtained from the PARO. Such legal maneuvering cannot be countenanced. We agree with the CA when it ratiocinated:

> Although the case before the agrarian office involves an issue of ownership and the cause of action subject of this appeal is one of possession, a judgment in the latter would render the declaration made in the former inutile. The respondents, as potential farm beneficiaries of the CARP would be owners of agricultural land to which they cannot exercise acts of ownership because the decision by the municipal trial court would effectively bar them from possession thereof. This absurd situation would make a mockery of the judicial system by utilizing it to circumvent and evade the policy of the State to promote social justice for the welfare of the farmers and farm workers, pursuant to the provisions of the Comprehensive Agrarian Reform Program (CARP). This Court can not allow itself to be an instrument of the petitioner in her adoption of smart, and perhaps, shrewd, legal maneuvering to defeat and escape the agrarian reform law that was enacted to alleviate the predicament of the landless farmers.[10]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 53348 is *AFFIRMED*.

SO ORDERED.

Tinga,[*] *Chico-Nazario (Acting Chairperson), Velasco, Jr.,*[*] and *Reyes, JJ.,* concur.

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[10] *Rollo*, p. 55.

[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

THIRD DIVISION

[G.R. No. 151110. September 11, 2008]

SPL. POL. LT. RAMON C. TORREDES, *petitioner, vs.* **CARLOS VILLAMOR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; PUBLIC OFFICE; ELUCIDATED. — A public office is defined as the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the appointing power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The purpose and nature of public office is grounded on it being a public trust. No less than the Constitution states: SEC. 1. Public office is a public trust. — Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PARTIES; EMPLOYER PEZA AS INSTRUMENTALITY OF GOVERNMENT IS THE PROPER ADVERSE PARTY AGAINST PETITIONER EMPLOYEE PUBLIC OFFICER; CASE AT BAR. — Petitioner here is a public officer whose duties, not being of a clerical or manual nature, involve the exercise of discretion in the performance of the functions of government. In turn, PEZA, which was created to effect and promote the common good, is petitioner's employer, an instrumentality of the government. Thus, PEZA first investigated and ascertained the veracity of the drivers' association's complaint against petitioner. Thereafter, finding petitioner liable for gross misconduct and conduct prejudicial to the best interest of the service, PEZA, as the disciplining authority, meted the penalty of dismissal prescribed by law. PEZA is not simply the disciplining authority in this instance. When petitioner appealed the PEZA decision to the CSC, he effectively challenged the disciplinary action taken by PEZA against him. Even at that

point, PEZA already became a party that could be adversely affected by the decision therein. His appeal from the CSC to the CA, which could have resulted in the reversal of the PEZA decision and the affirmation thereof by the CSC, would have adversely affected PEZA. Therefore, in the CSC and CA cases, neither respondent Villamor nor the drivers' association, but PEZA, was the adverse party contemplated by Rule 43 of the Rules of Court. Thus, it was necessary for the petitioner to implead PEZA.

3. ID.; ID.; ID.; FINDINGS OF ADMINISTRATIVE BODY SUPPORTED BY REQUIRED SUBSTANTIAL EVIDENCE, RESPECTED. — The acts complained of against petitioner, who, to reiterate, is a public officer, gave rise to threefold liability, specifically, civil, criminal and administrative liability. Entrenched in jurisprudence is the rule that the wrongful acts or omissions of public officers may result in three separate liabilities with the action for each proceeding independently of the others. Likewise, the quantum of evidence required in each case is different. By this principle, the jettisoning of the petition is inevitable upon a close perusal of the merits of the case. Petitioner's gross misconduct, coupled with the commission of conduct prejudicial to the public interest, was proven by the quantum of evidence required in administrative cases — substantial evidence, which we are not wont to disturb. Petitioner's plaintive cry for the relaxation of the rules of procedure is unavailing in light of the established facts. Our ruling in *Remolona v. Civil Service Commission* pertinently holds, thus: The general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence. Thus, when confronted with conflicting versions of factual matters, it is for the administrative agency concerned in the exercise of discretion to determine which party deserves credence on the basis of the evidence received. The rule, therefore, is that courts of justice will not generally interfere with purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of

discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess of jurisdiction.

APPEARANCES OF COUNSEL

Rico C. Rentuza for petitioner.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* challenging the Court of Appeals (CA) Resolution[1] in CA-G.R. SP No. 61819 which dismissed the petition for review under Rule 43 of the Rules of Court, filed by petitioner, Special Police Lieutenant Ramon C. Torredes, for failure to implead therein as respondent the Philippine Economic Zone Authority (PEZA).

The undisputed facts follow.

In a memorandum dated September 8, 1998,[2] the Zone Administrator of the Mactan Economic Zone (MEZ), Dante M. Quindoza, informed petitioner of the charges leveled against him by the president and members of the MEPZA Drivers' Association, namely, respondent Carlos Villamor, Joel Pino, Warden Sinangguti and Alex Goblin. The four had executed joint affidavits narrating petitioner's weekly exaction of ₱1,000.00 from the drivers' association allegedly for the payment of parking fees. However, the weekly exactions were not covered by official receipts. Villamor, president of the drivers' association, initially agreed to such arrangement to facilitate the issuance of the identification card signed by petitioner, as the Deputy Station Commander of the MEZ Police Force, for use at the PEZA compound.

In addition, the joint affidavits narrated an incident wherein petitioner handed a letter to Sinangguti demanding one (1) *lechon*

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[1] *Rollo*, pp. 148-149.

[2] *Id*. at 30.

(roasted pig) from the drivers' association for his birthday celebration. Fed up, the drivers' association, led by their president Villamor, discontinued the payment of the ₱1,000.00 weekly exaction and did not provide the roasted pig demanded by petitioner. Thus, on September 2, 1998, upon seeing Sinangguti, petitioner pushed him and simultaneously threatened him with bodily harm.

In the same memorandum, Quindoza directed petitioner to explain in writing why no administrative case(s) should be filed against him for the complaints of the drivers' association. In compliance with Quindoza's directive, petitioner filed an Explanation[3] categorically denying the charges leveled by the drivers' association. Petitioner explained that in the discharge of his duties and responsibilities as Deputy Station Commander of MEZ, specifically the strict enforcement of both the PEZA's and the Land Transportation Office's (LTO's) rules and regulations on cleanliness and traffic, he invariably caught the ire of the drivers' association whose members allegedly constantly violated these rules and regulations.

After the preliminary investigation and dissatisfied with the explanation of petitioner, PEZA formally charged petitioner with violation of Section 46(4)[4] and (27),[5] Chapter 6, Subtitle A, Title I, Book V, of Executive Order No. 292, otherwise known as the Administrative Code of 1987, docketed as Administrative Case No. 98-008.

In its decision,[6] the PEZA found petitioner liable not only for grave misconduct, but also for conduct grossly prejudicial to the best interest of the service. Correspondingly, petitioner was meted the penalty of dismissal from the service. The PEZA held, thus:

The very essence of tong collection is the personal unlawful gain at the expense of another by the abuse of one's authority. Verily,

[3] *Id.* at 33-39.

[4] (4) Misconduct.

[5] (27) Conduct prejudicial to the best interest of the service.

[6] *Rollo*, pp. 67-79.

[petitioner] abused his being a Deputy Station Commander by unlawfully demanding for a weekly amount of PhP1,000.00 for his personal gain. Even the demand for one (1) lechon is a form of *tong*.

It was clearly established that upon assuming his post as Deputy Station Commander of the MEZ Police, [petitioner] immediately summoned the President of the drivers' association. Right there and then [petitioner] demanded PhP1,000.00 tong per week from the said association for his personal gain. Whenever the association failed to give said tong, [petitioner] resorted to harassment and threats to the lives of the members of said association. This definitely is a grave misconduct.

On record are pieces of direct evidence proving the [petitioner's] harassment/threats. These are the two (2) IDs of Messrs. Sinangguti and Campos. During the hearing, it was certainly determined that the [petitioner] tore these IDs to harass/threaten the owners thereof for failure to give his PhP1,000.00 *tong*.

[Were] it not for the fact that the [petitioner] already became physical in his harassment/threats to life, it is believed that these drivers will not come out in the open and expose his nefarious activities. It was only when the [petitioner] physically attacked one (1) of the drivers that the association thought the [petitioner] is really capable of making good his threats to their lives.

The acts complained of do not only constitute grave misconduct, they are also conduct grossly prejudicial to the best interest of the service. Moreover, these acts could even be a basis for criminal prosecution.

By committing these violations, the [petitioner] betrayed the very trust reposed upon him as the Deputy Station Commander, the second in command in the MEZ Police Force. He, therefore, willfully chose to be unfaithful to his trust thereby causing undue damage to the image of the public service. It must be noted that "holders of government positions are mere trustees who are duty-bound and expected to serve the public with the highest standards of responsibility, integrity, loyalty and efficiency" (*CSC Resolution No. 94-1758, March 29, 1994*), and as this Authority has been emphasizing, honesty.

[Petitioner] should have kept in mind that he is an employee of that agency of government, which is involved in the noble task of

rendering service. His conduct and behavior should perforce be circled around the norms of honesty and integrity.

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This Authority has always been guided by the principle that "when a public officer or employee is administratively disciplined, the ultimate objective is not the punishment of such public officer or employee, but the improvement of public service and the preservation of the people's faith and confidence in their government."[7]

Aggrieved, petitioner appealed the PEZA decision to the Civil Service Commission (CSC). In its resolution,[8] the CSC affirmed the PEZA ruling dismissing petitioner from the service, thus:

After a careful evaluation of the records of the case, the [CSC] finds the appeal bereft of merit.

As defined, Grave Misconduct is a flagrantly or shamefully wrong or improper conduct. It is a transgression of some established and definite rule of action, more particularly unlawful or corrupt behavior or gross negligence by the public officer.

Based on the records of the case, [petitioner] Torredes was found to have committed the following acts which are clearly unbecoming of a public officer of his stature: demanding and personally receiving a weekly "*tong*" amounting to One Thousand Pesos (₱1,000.00) from the MEPZA Driver's Association; ordering Sinangguti to produce a *lechon* for his [petitioner's] birthday; and, pushing and threatening Sinangguti with bodily harm. These were established by the prosecution through the direct, positive, and categorical testimonies of its witnesses. Said testimonies cannot be easily overthrown by the [petitioner's] mere denial. It is a basic rule in evidence that a negative testimony cannot prevail over a positive one. Besides, factual findings of administrative agencies are accorded not only respect but finality because of the special knowledge and expertise gained by these quasi-judicial tribunals handling specific matters falling under their jurisdiction.

Further, there was no evidence on record to prove [petitioner's] allegation as to the ill-motive of the complainants in filing the

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[7] *Id*. at 77-78.

[8] *Id*. at 120-126.

charges against him. Besides, the said witnesses would not ordinarily testify against the [petitioner] unless there is some truth in their testimony.[9]

Undaunted and as previously adverted to, petitioner appealed to the CA via a petition for review under Rule 43 of the Rules of Court which was dismissed for petitioner's failure to implead and furnish PEZA a copy of his appeal.

Petitioner now implores us to reverse the CA's dismissal of his appeal, positing that: (1) PEZA, being the first investigating and disciplining authority, is not an adverse party within the contemplation of Rule 43 of the Rules of Court; and (2) assuming that PEZA is the adverse party, petitioner's failure to implead PEZA in, and furnish it with a copy of, his appeal before the CA does not merit the immediate dismissal thereof.

Petitioner argues that the CA erred in strictly applying procedural rules, thereby dismissing his appeal outright. He insists that compelling reasons obtain which should exempt him from the strict application of technical rules of procedure.

In all, petitioner maintains that the named respondent herein, *i.e.*, Villamor, and not PEZA, is the adverse party required by Rule 43 of the Rules of Court to be impleaded in the appeal and furnished with a copy thereof. Petitioner extensively cites the Administrative Code of 1987 provisions in Book V, Title I, Constitutional Commission; Subtitle A, Civil Service Commission; and Chapter 6, Sections 46 to 49 on Discipline, Disciplinary Jurisdiction, Procedure in Administrative Cases and Appeals, to prove that the PEZA is simply the investigating and, subsequently, the disciplining authority in this case. Perforce, since PEZA was not the original complainant but herein respondent Villamor and his drivers' association, petitioner argues that PEZA cannot be an adverse party in the appeal before the CA.

We do not subscribe to petitioner's faulty logic. Petitioner's contention conveniently ignores the administrative nature of this case and his position as a public officer.

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[9] *Id*. at 125-126.

The fact that petitioner occupies a public office brooks no argument. A public office is defined as the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the appointing power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.[10] The purpose and nature of public office is grounded on it being a public trust. No less than the Constitution states:

> SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

Unmistakably, petitioner is a public officer whose duties, not being of a clerical or manual nature, involve the exercise of discretion in the performance of the functions of government.[11] In turn, PEZA, which was created to effect and promote the common good, is petitioner's employer, an instrumentality of the government. Thus, PEZA first investigated and ascertained the veracity of the drivers' association's complaint against petitioner. Thereafter, finding petitioner liable for gross misconduct and conduct prejudicial to the best interest of the service, PEZA, as the disciplining authority, meted the penalty of dismissal prescribed by law.

PEZA is not simply the disciplining authority in this instance. When petitioner appealed the PEZA decision to the CSC, he effectively challenged the disciplinary action taken by PEZA against him. Even at that point, PEZA already became a party that could be adversely affected by the decision therein. His appeal from the CSC to the CA, which could have resulted in the reversal of the PEZA decision and the affirmation thereof by the CSC, would have adversely affected PEZA. Therefore,

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[10] DE LEON AND DE LEON JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 2000 Edition, p. 1.

[11] INTRODUCTORY PROVISIONS OF THE ADMINISTRATIVE CODE OF 1987, Sec. 2(14).

in the CSC and CA cases, neither respondent Villamor nor the drivers' association, but PEZA, was the adverse party contemplated by Rule 43 of the Rules of Court. Thus, it was necessary for the petitioner to implead PEZA.

More importantly, the acts complained of against petitioner, who, to reiterate, is a public officer, gave rise to threefold liability, specifically, civil, criminal and administrative liability. Entrenched in jurisprudence is the rule that the wrongful acts or omissions of public officers may result in three separate liabilities with the action for each proceeding independently of the others.[12] Likewise, the quantum of evidence required in each case is different.

By this principle, the jettisoning of the petition is inevitable upon a close perusal of the merits of the case. Petitioner's gross misconduct, coupled with the commission of conduct prejudicial to the public interest, was proven by the quantum of evidence required in administrative cases – substantial evidence, which we are not wont to disturb. Petitioner's plaintive cry for the relaxation of the rules of procedure is unavailing in light of the established facts.

Our ruling in *Remolona v. Civil Service Commission*[13] pertinently holds, thus:

> The general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence. Thus, when confronted with conflicting versions of factual matters, it is for the administrative agency concerned in the exercise of discretion to determine which party deserves credence on the basis of the evidence received. The rule, therefore, is that courts of justice will not generally interfere with

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[12] *Lourdes T. Domingo v. Rogelio I. Rayala*, G.R. Nos. 155831, 155840, 158700, February 18, 2008.

[13] 414 Phil. 590, 601 (2001).

purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess of jurisdiction.

WHEREFORE, premises considered, the petition is *DISMISSED*. The decision of the Philippine Economic Zone Authority in Administrative Case No. 98-008, and Resolution Nos. 1439 and 2143 of the Civil Service Commission dismissing petitioner from the service, are hereby *AFFIRMED*. No costs.

SO ORDERED.

Tinga,[*] *Chico-Nazario (Acting Chairperson), Velasco, Jr.,*[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 154464. September 11, 2008]

FERDINAND A. CRUZ, 332 Edang St., Pasay City, *petitioner, vs.* **JUDGE PRISCILLA MIJARES, Presiding Judge, Regional Trial Court, Branch 108, Pasay City, Metro Manila,** *public respondent.*

BENJAMIN MINA, JR., 332 Edang St., Pasay City, *private respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; ISSUANCE OF WRITS UNDER RULE 65; HIERARCHY OF COURTS MUST BE

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[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

OBSERVED; CASE AT BAR. — This Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus* and injunction is not exclusive; it has concurrent jurisdiction with the RTCs and the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as an absolute, unrestrained freedom to choose the court where the application therefor will be directed. A becoming regard of the judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against the RTCs should be filed with the Court of Appeals. The hierarchy of courts is determinative of the appropriate forum for petitions for the extraordinary writs; and only in exceptional cases and for compelling reasons, or if warranted by the nature of the issues reviewed, may this Court take cognizance of petitions filed directly before it. Considering, however, that this case involves the interpretation of Section 34, Rule 138 and Rule 138-A of the Rules of Court, the Court takes cognizance of herein petition. Nonetheless, the petitioner is cautioned not to continue his practice of filing directly before this Court petitions under Rule 65 when the issue raised can be resolved with dispatch by the Court of Appeals. We will not tolerate litigants who make a mockery of the judicial hierarchy as it necessarily delays more important concerns before us.

2. ID.; LAW STUDENT PRACTICE RULE; CONDITIONS FOR STUDENT PRACTICE AND APPEARANCE (RULE 138-A); DISTINGUISHED FROM SECTION 34, RULE 138; CASE AT BAR. — Rule 138-A, or the Law Student Practice Rule, provides: Section 1. *Conditions for Student Practice*. — A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is **enrolled in a recognized law school's clinical legal education program** approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school. Sec. 2. *Appearance*. — The appearance of the law student authorized by this rule, shall be **under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school.** Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic. However, the

petitioner insisted that the basis of his appearance was Section 34 of Rule 138, which provides: Sec. 34. *By whom litigation is conducted*. — In the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. **In any other court, a party may conduct his litigation personally** or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar. and is a rule distinct from Rule 138-A. It recognizes the right of an individual to represent himself in any case to which he is a party. The Rules state that a party may conduct his litigation personally or with the aid of an attorney, and that his appearance must either be personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the course of proceedings from commencement to the termination of the litigation. Considering that a party personally conducting his litigation is restricted to the same rules of evidence and procedure as those qualified to practice law, petitioner, not being a lawyer himself, runs the risk of falling into the snares and hazards of his own ignorance. Therefore, Cruz as plaintiff, at his own instance, can personally conduct the litigation of Civil Case No. 01-0410. He would then be acting not as a counsel or lawyer, but as a party exercising his right to represent himself. The trial court must have been misled by the fact that the petitioner is a law student and must, therefore, be subject to the conditions of the Law Student Practice Rule. It erred in applying Rule 138-A, when the basis of the petitioner's claim is Section 34 of Rule 138. The former rule provides for conditions when a law student may appear in courts, while the latter rule allows the appearance of a non-lawyer as a party representing himself.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THAT RIGHT OF ACCUSED TO COUNSEL CANNOT BE WAIVED DURING TRIAL, NOT APPLICABLE IN CIVIL CASE. — The constitutional right of an accused to be heard by himself and counsel, this Court has held that during the trial, the right to counsel cannot be waived. The rationale for this ruling was articulated in *People v. Holgado*, where we declared that "even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of

procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence." The case at bar involves a civil case, with the petitioner as plaintiff therein. The solicitous concern that the Constitution accords the accused in a criminal prosecution obviously does not obtain in a civil case. Thus, a party litigant in a civil case, who insists that he can, without a lawyer's assistance, effectively undertake the successful pursuit of his claim, may be given the chance to do so. In this case, petitioner alleges that he is a law student and impliedly asserts that he has the competence to litigate the case himself. Evidently, he is aware of the perils incident to this decision. In addition, it was subsequently clarified in Bar Matter 730, that by virtue of Section 34, Rule 138, a law student may appear as an agent or a friend of a party litigant, without need of the supervision of a lawyer, before inferior courts. Here, we have a law student who, as party litigant, wishes to represent himself in court. We should grant his wish.

4. REMEDIAL LAW; DISQUALIFICATION OF JUDICIAL OFFICERS; GROUND OF BIAS AND PREJUDICE MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. — In a Motion for Inhibition, the movant must prove the ground for bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial, as voluntary inhibition is primarily a matter of conscience and addressed to the sound discretion of the judge. The decision on whether she should inhibit herself must be based on her rational and logical assessment of the circumstances prevailing in the case before her. Absent clear and convincing proof of grave abuse of discretion on the part of the judge, this Court will rule in favor of the presumption that official duty has been regularly performed.

D E C I S I O N

NACHURA, *J.*:

This is a Petition for *Certiorari*, Prohibition and *Mandamus*, with prayer for the issuance of a writ of preliminary injunction

under Rule 65 of the Rules of Court. It was directly filed with this Court assailing the Resolutions dated May 10, 2002[1] and July 31, 2002[2] of the Regional Trial Court (RTC), Branch 108, Pasay City, which denied the appearance of the plaintiff Ferdinand A. Cruz, herein petitioner, as party litigant, and the refusal of the public respondent, Judge Priscilla Mijares, to voluntarily inhibit herself from trying the case. No writ of preliminary injunction was issued by this Court.

The antecedents:

On March 5, 2002, Ferdinand A. Cruz (petitioner) sought permission to enter his appearance for and on his behalf, before the RTC, Branch 108, Pasay City, as the plaintiff in Civil Case No. 01-0410, for Abatement of Nuisance. Petitioner, a fourth year law student, anchors his claim on Section 34 of Rule 138 of the Rules of Court[3] that a non-lawyer may appear before any court and conduct his litigation personally.

During the pre-trial, Judge Priscilla Mijares required the petitioner to secure a written permission from the Court Administrator before he could be allowed to appear as counsel for himself, a party-litigant. Atty. Stanley Cabrera, counsel for Benjamin Mina, Jr., filed a Motion to Dismiss instead of a pre-trial brief to which petitioner Cruz vehemently objected alleging that a Motion to Dismiss is not allowed after the Answer had been filed. Judge Mijares then remarked, "*Hay naku, masama 'yung marunong pa sa Huwes. Ok*?" and proceeded to hear the pending Motion to Dismiss and calendared the next hearing on May 2, 2002.

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[1] *Rollo*, pp. 34-35.

[2] *Id*. at 43-45.

[3] Section 31-Rule 138. By whom litigation conducted. – *In the court of justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.*

On March 6, 2002, petitioner Cruz filed a Manifestation and Motion to Inhibit,[4] praying for the voluntary inhibition of Judge Mijares. The Motion alleged that expected partiality on the part of the respondent judge in the conduct of the trial could be inferred from the contumacious remarks of Judge Mijares during the pre-trial. It asserts that the judge, in uttering an uncalled for remark, reflects a negative frame of mind, which engenders the belief that justice will not be served.[5]

In an Order[6] dated April 19, 2002, Judge Mijares denied the motion for inhibition stating that throwing tenuous allegations of partiality based on the said remark is not enough to warrant her voluntary inhibition, considering that it was said even prior to the start of pre-trial. Petitioner filed a motion for reconsideration[7] of the said order.

On May 10, 2002, Judge Mijares denied the motion with finality.[8] In the same Order, the trial court held that for the failure of petitioner Cruz to submit the promised document and jurisprudence, and for his failure to satisfy the requirements or conditions under Rule 138-A of the Rules of Court, his appearance was denied.

In a motion for reconsideration,[9] petitioner reiterated that the basis of his appearance was not Rule 138-A, but Section 34 of Rule 138. He contended that the two Rules were distinct and are applicable to different circumstances, but the respondent judge denied the same, still invoking Rule 138-A, in an Order[10] dated July 31, 2002.

On August 16, 2002, the petitioner directly filed with this Court, the instant petition and assigns the following errors:

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[4] Manifestation and Motion to Inhibit, *rollo*, pp. 29-30.

[5] *Rollo*, p. 30.

[6] *Id*. at 31.

[7] Annex "D" of the Petition, *id*. at 32-33.

[8] *Rollo*, pp. 34-35.

[9] Annex "F" of the Petition, *id*. at 36-42.

[10] Annex "G" of the Petition, *id*. at 43-45.

I.

THE RESPONDENT REGIONAL TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED THE APPEARANCE OF THE PETITIONER, FOR AND IN THE LATTER'S BEHALF, IN CIVIL CASE NO. 01-0401 [sic] CONTRARY TO RULE 138, SECTION 34 OF THE RULES OF COURT, PROVIDING FOR THE APPEARANCE OF NON-LAWYERS AS A PARTY LITIGANT;

II.

THE RESPONDENT COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT VOLUNTARILY INHIBIT DESPITE THE ADVENT OF JURISPRUDENCE [sic] THAT SUCH AN INHIBITION IS PROPER TO PRESERVE THE PEOPLE'S FAITH AND CONFIDENCE TO THE COURTS.

The core issues raised before the Court are: (1) whether the extraordinary writs of *certiorari*, prohibition and *mandamus* under Rule 65 of the 1997 Rules of Court may issue; and (2) whether the respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the appearance of the petitioner as party litigant and when the judge refused to inhibit herself from trying the case.

This Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus* and injunction is not exclusive; it has concurrent jurisdiction with the RTCs and the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as an absolute, unrestrained freedom to choose the court where the application therefor will be directed.[11] A becoming regard of the judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against the RTCs should be filed with the Court of Appeals.[12] The hierarchy of courts is determinative of the appropriate forum for petitions for the extraordinary writs; and only in exceptional cases and for compelling reasons, or if warranted by the nature of the issues

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[11] *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-424.

[12] *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529, 543 (2004).

reviewed, may this Court take cognizance of petitions filed directly before it.[13]

Considering, however, that this case involves the interpretation of Section 34, Rule 138 and Rule 138-A of the Rules of Court, the Court takes cognizance of herein petition. Nonetheless, the petitioner is cautioned not to continue his practice of filing directly before this Court petitions under Rule 65 when the issue raised can be resolved with dispatch by the Court of Appeals. We will not tolerate litigants who make a mockery of the judicial hierarchy as it necessarily delays more important concerns before us.

In resolving the second issue, a comparative reading of Rule 138, Section 34 and Rule 138-A is necessary.

Rule 138-A, or the Law Student Practice Rule, provides:

RULE 138-A

LAW STUDENT PRACTICE RULE

Section 1. *Conditions for Student Practice*. – A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is **enrolled in a recognized law school's clinical legal education program** approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

Sec. 2. *Appearance*. – The appearance of the law student authorized by this rule, shall be **under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school.** Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

The respondent court held that the petitioner could not appear for himself and on his behalf because of his failure to comply

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[13] *Cruz v. Mina*, G.R. No. 154207, April 27, 2007, 522 SCRA 382, 386; *United Laboratories, Inc. v. Isip*, G.R. No. 163858, June 28, 2005, 461 SCRA 574, 593; *Ark Travel Express, Inc. v. Abrogar*, 457 Phil. 189, 202 (2003).

with Rule 138-A. In denying petitioner's appearance, the court *a quo* tersely finds refuge in the fact that, on December 18, 1986, this Court issued Circular No. 19, which eventually became Rule 138-A, and the failure of Cruz to prove on record that he is enrolled in a recognized school's clinical legal education program and is under supervision of an attorney duly accredited by the law school.

However, the petitioner insisted that the basis of his appearance was Section 34 of Rule 138, which provides:

> Sec. 34. *By whom litigation is conducted.* - In the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney**. In any other court, a party may conduct his litigation personally** or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

and is a rule distinct from Rule 138-A.

From the clear language of this provision of the Rules, it will have to be conceded that the contention of the petitioner has merit. It recognizes the right of an individual to represent himself in any case to which he is a party. The Rules state that a party may conduct his litigation personally or with the aid of an attorney, and that his appearance must either be personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the course of proceedings from commencement to the termination of the litigation.[14] Considering that a party personally conducting his litigation is restricted to the same rules of evidence and procedure as those qualified to practice law,[15] petitioner, not being a lawyer himself, runs the risk of falling into the snares and hazards of his own ignorance. Therefore, Cruz as plaintiff, at his own instance, can personally conduct the litigation of Civil Case No. 01-0410. He would then be acting not as a counsel or lawyer, but as a party exercising his right to represent himself.

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[14] *Santos v. Lacurom*, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639, 648-649.

[15] *Maderada v. Mediodea*, 459 Phil. 701, 716-717 (2003).

The trial court must have been misled by the fact that the petitioner is a law student and must, therefore, be subject to the conditions of the Law Student Practice Rule. It erred in applying Rule 138-A, when the basis of the petitioner's claim is Section 34 of Rule 138. The former rule provides for conditions when a law student may appear in courts, while the latter rule allows the appearance of a non-lawyer as a party representing himself.

The conclusion of the trial court that Rule 138-A superseded Rule 138 by virtue of Circular No. 19 is misplaced. The Court never intended to repeal Rule 138 when it released the guidelines for limited law student practice. In fact, it was intended as an addendum to the instances when a non-lawyer may appear in courts and was incorporated to the Rules of Court through Rule 138-A.

It may be relevant to recall that, in respect to the constitutional right of an accused to be heard by himself and counsel,[16] this Court has held that during the trial, the right to counsel cannot be waived.[17] The rationale for this ruling was articulated in *People v. Holgado*,[18] where we declared that "even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence."

The case at bar involves a civil case, with the petitioner as plaintiff therein. The solicitous concern that the Constitution accords the accused in a criminal prosecution obviously does not obtain in a civil case. Thus, a party litigant in a civil case, who insists that he can, without a lawyer's assistance, effectively undertake the successful pursuit of his claim, may be given the chance to do so. In this case, petitioner alleges that he is a law student and impliedly asserts that he has the competence to

[16] CONSTITUTION, Art. III, Sec. 14(2).

[17] *Flores v. Ruiz*, 179 Phil. 351, 355 (1979).

[18] 86 Phil. 752 (1950).

litigate the case himself. Evidently, he is aware of the perils incident to this decision.

In addition, it was subsequently clarified in Bar Matter 730, that by virtue of Section 34, Rule 138, a law student may appear as an agent or a friend of a party litigant, without need of the supervision of a lawyer, before inferior courts. Here, we have a law student who, as party litigant, wishes to represent himself in court. We should grant his wish.

Additionally, however, petitioner contends that the respondent judge committed manifest bias and partiality by ruling that there is no valid ground for her voluntary inhibition despite her alleged negative demeanor during the pre-trial when she said: "*Hay naku, masama 'yung marunong pa sa Huwes. Ok*?" Petitioner avers that by denying his motion, the respondent judge already manifested conduct indicative of arbitrariness and prejudice, causing petitioner's and his co-plaintiff's loss of faith and confidence in the respondent's impartiality.

We do not agree.

It must be noted that because of this incident, the petitioner filed an administrative case[19] against the respondent for violation of the Canons of Judicial Ethics, which we dismissed for lack of merit on September 15, 2002. We now adopt the Court's findings of fact in the administrative case and rule that there was no grave abuse of discretion on the part of Judge Mijares when she did not inhibit herself from the trial of the case.

In a Motion for Inhibition, the movant must prove the ground for bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial,[20] as voluntary inhibition is primarily a matter of conscience and addressed to the sound discretion of the judge. The decision on whether she should inhibit herself must be based on her rational and logical assessment of the circumstances prevailing in the

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[19] *Ferdinand Cruz v. Judge Priscilla Mijares,* OCA IPI No. 02-1452-RTJ.

[20] *People v. Ong,* G.R. Nos. 162130-39, May 5, 2006, 489 SCRA 679, 688.

case before her.[21] Absent clear and convincing proof of grave abuse of discretion on the part of the judge, this Court will rule in favor of the presumption that official duty has been regularly performed.

WHEREFORE, the Petition is *PARTIALLY GRANTED*. The assailed Resolution and Order of the Regional Trial Court, Branch 108, Pasay City are *MODIFIED*. Regional Trial Court, Branch 108, Pasay City is *DIRECTED* to *ADMIT* the Entry of Appearance of petitioner in Civil Case No. 01-0410 as a party litigant.

No pronouncement as to costs.

SO ORDERED.

Tinga,[*] *Chico-Nazario (Acting Chairperson), Velasco, Jr.,*[*] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166096. September 11, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **RAMON BRIGIDO L. VELASCO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL DECISION OF THE NLRC. — Rule 43 provides for appeal from quasi-judicial agencies to

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[21] *Abrajano v. Heirs of Augusto F. Salas, Jr.*, G.R. No. 158895, February 16, 2006, 482 SCRA 476, 487.

[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

the CA by way of petition for review. Petition for review on *certiorari* or appeal by *certiorari* is a recourse to the Supreme Court under Rule 45. The mode of appeal resorted to by Velasco is wrong because appeal is not the proper remedy in elevating to the CA the decision of the NLRC. Section 2, Rule 43 of the 1997 Rules of Civil Procedure is explicit that Rule 43 "shall not apply to judgments or final orders issued under the Labor Code of the Philippines." The correct remedy that should have been availed of is the special civil action of *certiorari* under Rule 65. As this Court held in the case of *Pure Foods Corporation v. NLRC*, "the party may also seasonably avail of the special civil action for *certiorari*, where the tribunal, board or officer exercising judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer." In any case, *St. Martin Funeral Homes v. National Labor Relations Commission* settled any doubt as to the manner of elevating decisions of the NLRC to the CA by holding that "the legislative intendment was that the special civil action of *certiorari* was and still is the proper vehicle for judicial review of decisions of the NLRC."

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES. — Article 282 of the Labor Code enumerates the just causes where an employer may terminate the services of an employee, to wit: a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; b) Gross and habitual neglect by the employee of his duties; c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and e) Other causes analogous to the foregoing.

3. ID.; ID.; ID.; ID.; MISCONDUCT; ELUCIDATED. — In *Austria v. National Labor Relations Commission*, the Court defined misconduct as "improper and wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." In *Camus*

v. Civil Service Board of Appeals, misconduct was described as "wrong or improper conduct." It implies a wrongful intention and not a mere error of judgment. Of course, ordinary misconduct would not justify the termination of the services of an employee. The law is explicit that the misconduct should be serious. It is settled that in order for misconduct to be serious, "it must be of such grave and aggravated character and not merely trivial or unimportant." As amplified by jurisprudence, the misconduct must (1) be serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.

4. ID.; ID.; ID.; ID.; ID.; SERIOUS MISCONDUCT; COMMITTED IN CASE AT BAR. — Velasco violated bank rules when he transacted a "no-book" withdrawal by his failure to present his passbook to the PNB Ligao, Albay Branch on June 30, 1995. Section 1216 of the Manual of Regulations for Banks and Other Financial Intermediaries state that "[b]anks are prohibited from issuing/accepting 'withdrawal authority slips' or any other similar instruments designed to effect withdrawals of savings deposits without following the usual practice of requiring the depositors concerned to present their passbooks and accomplishing the necessary withdrawal slips." Further, he failed to present any letter of introduction as mandated under General Circular 3-72-92 which requires that "[b]efore going out-of-town, the Depositor secures a Letter of Introduction from the branch/ office where his Peso Savings Account is maintained." True, a strict reading of General Circular 3-72-92 would lead one to conclude that only persons with peso savings account are required to secure a letter of introduction. However, simple logic dictates that those maintaining dollar savings account are also included. No cogent reason would be served by the rule if only persons with peso savings account are required to get a letter of introduction. Otherwise, there can be a circumvention of the rule. *Nemo potest facere per alium qud non potest facere per directum*. No one is allowed to do indirectly what he is prohibited to do directly. ***Sinuman ay hindi pinapayagang gawin nang hindi tuwiran ang ipinagbabawal gawin nang tuwiran***. As an audit officer, Velasco should be the first to ensure that banking laws, policies, rules and regulations, are strictly observed and applied by its officers in the day-to-day transactions. The banking system is an indispensable institution in the modern world. It plays a vital role in the economic life

of every civilized nation. Whether banks act as mere passive entities for the safekeeping and saving of money, or as active instruments of business and commerce, they have become an ubiquitous presence among the citizenry, who have come to regard them with respect and even gratitude and, most of all, confidence.

5. ID.; ID.; ID.; ID.; ID.; ID.; NOT EXCUSED BY ALLEGED COMMON PRACTICE OF PROHIBITED ACTIVITY. — In *Santos v. San Miguel Corporation*, petitioner, in his defense, cited the prolonged practice of payroll personnel, including persons in managerial levels, of encashing personal checks. Finding this argument unmeritorious, the Court held that "[p]rolonged practice of encashing personal checks among respondent's payroll personnel does not excuse or justify petitioner's misdeeds. Her willful and deliberate acts were in gross violation of respondent's policy against encashment of personal checks of its personnel, embodied in its Cash Department Memorandum dated September 6, 1989." The Court even added that petitioner "cannot feign ignorance of such memorandum as she is duty-bound to keep abreast of company policies related to financial matters within the corporation." We apply the same principle here. Suffice it to state that the option of who to charge or punish belongs to PNB. As an employer, PNB is given the latitude to determine who among its erring employees should be punished, to what extent and what penalty to impose. Too, by charging Velasco, PNB is not estopped from charging its other employees who might as well have been remiss with their job.

6. REMEDIAL LAW; EVIDENCE; ALIBI; CHANGE OF HEART IN DECLARATIONS. — We are not unaware that Velasco had a change of heart. In his sworn Letter-Explanation February 12, 1996, he admitted that his June 30, 1995 withdrawal of US$15,000.00 was a "no-book" transaction. However, in his sworn Answer dated April 30, 1996, he claimed that he actually presented his passbook when he withdrew on June 30, 1995. To recall, he was charged with dishonesty, grave misconduct, and/or conduct grossly prejudicial to the best interest of the service for irregularly handling his dollar savings account. Thus, it is safe to assume that when he prepared his February 12, 1996 sworn Letter-Explanation, the circumstances surrounding his June 30, 1995 withdrawal at PNB Ligao, Albay Branch were still fresh on his mind. The allegations against him were serious,

which should have put him on guard from preparing a haphazard explanation. He should have been mindful that dire consequences would surely befall him should the charges against him be proven. Lest it be forgotten, the no-book withdrawal was confirmed by the concerned officers of PNB Ligao, Albay Branch, namely, Quiambao, and Gacer, and Letada. These circumstances, taken together, lead to no other conclusion than that Velasco changed his explanation from "no-book" to "with book" transaction after realizing that he violated bank rules and regulations. The claim of Velasco that his initial answer was made under pressing circumstances is too flimsy an excuse. It partakes of the nature of an alibi. As such, it constitutes a self-serving negative evidence which cannot he accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters. The Court has consistently frowned upon the defense of alibi, and received it with caution, not only because it is inherently weak and unreliable but also because it can be easily fabricated.

7. ID.; ID.; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES SUPPORTED BY SUBSTANTIAL EVIDENCE, RESPECTED.— This Court consistently held that factual findings of quasi-judicial agencies, which have acquired expertise in matters entrusted to their jurisdiction, are accorded not only respect but also finality if they are supported by substantial evidence. Thus, in the absence of proof that the Labor Arbiter or the NLRC had gravely abused their discretion, this Court shall deem conclusive and will not overturn their particular factual findings. The Labor Arbiter and the NLRC are in unison that Velasco transacted a no-book withdrawal and failed to present a letter of introduction at PNB Ligao, Albay Branch on June 30, 1995. He also forged his passbook to cover up his offense. Being duly supported by substantial evidence, We sustain said finding. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other. A service of irregularities, when combined, may constitute serious misconduct which is a just cause for dismissal.

8. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYERS ALLOWED A WIDE LATITUDE OF DISCRETION IN TERMINATING MANAGERIAL EMPLOYEES.— Employers are allowed wide

latitude of discretion in terminating managerial employees who, by virtue of their position, require full trust and confidence in the performance of their duties. Managerial employees like Velasco are tasked to perform key and sensitive functions and are bound by more exacting work ethics. Indeed, not even his eighteen (18) years of service could exonerate him.

9. ID.; ID.; PREVENTIVE SUSPENSION; PROPRIETY IN CASE AT BAR. — PNB was registered under the Corporation Code under SEC Reg. No. ASO 96-005555 dated May 27, 1996. Thus, on that day, employees of PNB came under the jurisdiction of the Labor Code, whose Sections 8 and 9 of Rule XXIII, Book V of the Implementing Rules state: Section 8. *Preventive Suspension*. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers. Section 9. No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker. PNB has the right to preventively suspend Velasco during the pendency of the administrative case against him. It was obviously done as a measure of self-protection. It was necessary to secure the vital records of PNB which, in view of the position of Velasco as internal auditor, are easily accessible to him.

10. ID.; ID.; DISMISSAL; SEPARATION PAY AND BACKWAGES NOT PROPER IN LEGAL DISMISSAL; CASE AT BAR. — Velasco was preventively suspended for more than thirty (30) days as of May 27, 1996, while the records bear that Velasco was paid his salaries from August 1, 1996 to October 31, 1996. Thus, the NLRC is correct in its holding that he may recover his salaries from May 27, 1996 to July 31, 1996. He is not entitled to separation and backwages because he was not illegally dismissed. We note though that PNB was not at all insensitive to his plight, considering (1) his restitution of the amount akin to no actual loss to the bank, and (2) his length of service of eighteen (18) years. As stated earlier, PNB imposed on Velasco

the penalty of forced resignation with benefits, instead of dismissal. The records bear out that he was granted ₱542,110.75 as separation benefits which was used to offset his loan in the bank, leaving an outstanding balance of ₱167,625.82 as of May 27, 1997. We find that PNB acted humanely under the circumstances.

11. ID.; ID.; EQUAL PROTECTION FOR EMPLOYER, RECOGNIZED. — The law imposes great burdens on the employer. One needs only to look at the varied provisions of the Labor Code. Indeed, the law is tilted towards the plight of the working man. The Labor Code is titled that way and not as "Employer Code". As one American ruling puts it, the protection of labor is the highest office of our laws. Corollary to this, however, is the right of the employer to expect from the employee no less than adequate work, diligence and good conduct. As Mr. Justice Joseph McKenna of the United States Supreme Court said in *Arizona Copper Co. v. Hammer*, "[t]he difference between the position of the employer and the employee, simply considering the latter as economically weaker, is not a justification for the violation of the rights of the former."

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Cruz Law Firm for respondent.

D E C I S I O N

REYES, R.T., *J.*:

THIS is a tale of a bank officer-depositor clinging to his position after violating bank regulations and falsifying his passbook to cover up a false transaction.

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking the reversal of the Decision[1] and Resolution[2] of the Court of Appeals (CA).

[1] *Rollo*, pp. 78-89; Annex "A", CA-G.R. No. 61881. Penned by Associate Justice Danilo P. Pine, with Associate Justices Martin S. Villarama, Jr. and Arcangelita Romilla-Lontok, concurring.

[2] *Id.* at 90-91; Annex "B".

The appealed decision reversed those of the National Labor Relations Commission (NLRC)[3] and the Labor Arbiter[4] which dismissed the complaint for illegal dismissal and damages of Ramon Brigido L. Velasco against Philippine National Bank (PNB).

The Facts

Ramon Brigido L. Velasco, a PNB audit officer, and his wife, Belen Amparo E. Velasco, maintained Dollar Savings Account No. 010-714698-9[5] at PNB Escolta Branch. On June 30, 1995, while on official business at the Legazpi Branch, he went to the PNB Ligao, Albay Branch and withdrew US$15,000.00 from the dollar savings account. At that time, the account had a balance of US$15,486.07. The Ligao Branch is an off-line branch, *i.e.*, one with no network connection or computer linkage with other PNB branches and the head office. The transaction was evidenced by an Interoffice Savings Account Withdrawal Slip, also known as the Ticket Exchange Center (TEC).[6]

On July 10, 1995, PNB Escolta Branch received the TEC covering the withdrawal. It was included among the proofsheet entries of Cashier IV Ruben Francisco, Jr. The withdrawal was not, however, posted in the computer of the Escolta Branch when it received said advice. This means that the withdrawal was not recorded. Thus, the account of Velasco had an overstatement of US$15,000.00.

Sometime in September 1995, while Velasco was on a provincial audit, he claimed calling through phone a kin in Manila who just arrived from abroad. This kin allegedly told him that his New York-based brother, Gregorio Velasco, sent

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[3] *Id.* at 108-114; Annex "D". NLRC CA No. 020663-99. Penned by Commissioner Ireneo B. Bernardo, with Commissioners Lourdes C. Javier and Tito F. Genilo, concurring.

[4] *Id.* at 93-106; Annex "C". NLRC NRC Case No. 00-12-08987-97.

[5] Annex "F".

[6] Annex "G".

him various checks through his kin totaling US$15,000.00 and that the checks would just be deposited in time in Velasco's account.

On October 6, 1995, Velasco updated his dollar savings account by depositing US$12.78, reflecting a balance of US$15,486.01. He was allegedly satisfied with the updated balance, as he thought that the US$15,000.00 in his account was the amount given by his brother.

On different dates, Velasco made several inter-branch withdrawals from the dollar savings account, to wit:

PNB Branch	Date	Amount
PNB Legaspi	November 7, 1995	US$2,000.00
PNB Legaspi	November 13, 1995	3,329.97
Cash Dept.	November 23, 1995	4,000.00
	Total	US$9,329.97

Mrs. Belen Velasco also withdrew several amounts on the dollar account, *viz.*:

PNB Branch	Date	Amount
PNB CEPZ	December 6, 1995	US$11,494.00
PNB Frisco	January 2, 1996	1,292.32
	Total	US$12,786.32

Subsequently, the dollar savings account of the spouses was closed.

On February 6, 1996, in the course of conducting an audit at PNB Escolta Branch, Molina D. Salvador, a member of the Internal Audit Department (IAD) of PNB, discovered that the inter-branch withdrawal made on June 30, 1995 by Velasco at PNB Ligao, Albay Branch in the amount of US$15,000.00 was not posted; and that no deposit of said amount had been credited to the dollar savings account.

On February 7, 1996, Velasco was notified of the glitch when he reported at the IAD. He said it was only in the evening that

he was able to verify from his kin that the latter was not able to deposit in his account the US$15,000.00.[7]

The following day, or on February 8, 1996, Velasco went to Dolorita Donado, assistant vice president of the Internal Audit Department and team leader of the Escolta Task Force, and delivered three (3) checks in the amount of US$5,000.00 each or a total of US$15,000.00. However, Donato returned the checks to Velasco and instructed him that he should personally deposit the checks.

On February 14, 1996, he deposited the checks and the amount was consequently applied to his unposted withdrawal of US$15,000.00.

Meanwhile, on February 9, 1996, PNB vice president, B.C. Hermoso, required[8] Velasco to submit a written explanation concerning the incident.

On February 12, 1996, he submitted his sworn letter-explanation.[9] He described the inter-branch withdrawal at PNB Ligao, Albay Branch on June 30, 1995 as "no-book," *i.e.*, without the corresponding presentation to the bank teller of the savings passbook. He stated, among others, that his withdrawal was accommodated as the statement of account showed a balance of US$15,486.01, and that he is personally known to the officers and staff, being a former colleague at the PNB Ligao, Albay Branch.

On February 27, 1996, PNB Ligao, Albay Branch division chief III, Rexor Quiambao, financial specialist II, Emma Gacer, and division chief II, Renato M. Letada, confirmed the "no-book" withdrawal.[10]

On March 5, 1996, PNB formally charged Velasco with "*Dishonesty, Grave Misconduct, and/or Conduct Grossly*

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[7] *Id.* at 121.

[8] Annex "H".

[9] Annex "I".

[10] CA *rollo*, pp. 186-188; Annex "M".

Prejudicial to the Best Interest of the Service for the irregular handling of Dollar Savings Account No. 010-714698-9."[11] The administrative charge alleged that: (1) he transacted a no-book withdrawal against his Dollar Savings Account No. 010-714698-9 at PNB Ligao, Albay Branch in violation of Section 1216 of the Manual of Regulations for Banks; (2) in transacting the no-book withdrawal, he failed to present any letter of introduction as required under General Circular 3-72/92; (3) the irregular inter-branch withdrawal was aggravated by the failure of Escolta Branch to post/enter the withdrawal into the computer upon receipt of the TEC advice, resulting in the overstatement of the account balance by US$15,000.00; and (4) since he was presumed to be fully aware that neither the deposit nor withdrawal of the US$15,000.00 was reflected on the passbook, he was able to appropriate the amount for his personal benefit, free of interest, to the damage and prejudice of PNB.[12]

On April 8, 1996, PNB withheld his rice and sugar subsidy, dental/optical/outpatient medical benefits, consolidated medical benefits, commutation of hospitalization benefits, clothing allowance, longevity pay, anniversary bonus, Christmas bonus and cash gift, performance incentive award, and mid-year financial assistance.[13] April 10, 1996, he was placed under preventive suspension for a period of ninety (90) days.[14]

On May 2, 1996, Velasco submitted his sworn Answer[15] the administrative charge against him. Unlike his previous answer, he here claimed that his withdrawal on June 30, 1995 was "with passbook." As proof, he attached a copy of his passbook[16] bearing the withdrawal entry of US$15,000.00 on June 30, 1995. Explaining the inconsistency with his sworn letter-explanation

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[11] Annex "J".

[12] *Rollo,* pp. 123-125.

[13] CA *rollo,* p. 121; Annex "G".

[14] Annex "K".

[15] Annex "L".

[16] *Rollo,* p. 117.

on February 12, 1996, he said his initial answer was made under pressing circumstances. He was unable to find his passbook which was then kept by his wife who could not be contacted at that moment.

On October 2, 1996, the Administrative Adjudication Office (AAO) of PNB composed of Fernando R. Mangubat, Jr., Wilfredo S. Verzosa, Celso D. Benologa, and Jesse L. Figueroa exonerated Velasco of the charges of dishonesty and conduct prejudicial to the best interest of service. However, he was found guilty of grave misconduct, mitigated by length of service and absence of actual loss to PNB. Thus, he was meted the penalty of forced resignation with benefits.[17]

On October 31, 1996, Velasco was formally notified of the findings of the AAO after its approval by the management. As of that time, he had been employed with PNB for eighteen (18) years, holding the position of Manager 1 of the IAD. He was earning ₱14,932.00 per month plus a monthly allowance of ₱3,940.00 or a total salary of ₱18,872.00 per month.

On December 22, 1997, he filed a Complaint[18] against PNB for illegal suspension, illegal dismissal, and damages before the NLRC.

Labor Arbiter, NLRC, and CA Dispositions

On July 9, 1999, Labor Arbiter Pablo C. Espiritu gave judgment, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. Dismissing the complaint for illegal dismissal against respondents for want of merit.
> 2. Ordering PNB to pay complainant unpaid wages for the period May 12, 1996 to October 31, 1996 in the amount of ₱103,796.00.
> 3. Dismissing complainant's claims for damages and other monetary claims for lack of merit.

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[17] Annex "M".

[18] Annex "O".

SO ORDERED.[19]

In his ruling, the Labor Arbiter opined that as an employee and officer of PNB for eighteen (18) years, Velasco is expected to know bank procedures, including the expected entries in a savings passbook. Even if it should be assumed that he presented his passbook when he withdrew US$15,000.00 at the PNB Ligao Branch on June 30, 1995, he should have known that there was something wrong with the amounts credited to his account when he made an update on October 6, 1995. Being an audit officer, and fully aware of his withdrawal of US$15,000.00, he should have made inquiries on the inconsistency of the entries in his passbook.[20]

The Labor Arbiter also found as flimsy the argument that the additional US$15,000.00 was the amount given to Velasco by his brother from the United States. As early as October 6, 1995, when he updated his passbook, Velasco should have known that (1) his brother's checks in the amount of US$15,000.00 have not been deposited in his dollar savings account and (2) he appears to have been improperly credited with US$15,000.00.[21]

Moreover, the Labor Arbiter held that the entry in the passbook purportedly reflecting the withdrawal of US$15,000.00 is a forgery. It was done to conform to the defense of Velasco that he presented his passbook on June 30, 1995.[22]

On the charge of illegal suspension, the Labor Arbiter held that the preventive suspension of Velasco was reasonable in view of the sensitive nature of his position. It was also necessary to protect the records of PNB.[23] It follows that the withholding of his company benefits is reasonable.[24] Nonetheless,

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[19] *Rollo*, p. 106.

[20] *Id.* at 101.

[21] *Id.* at 101-102.

[22] *Id.* at 104-105.

[23] *Id.* at 105.

[24] *Id.*

he should be paid his salary from May 12, 1996 up to October 31, 1996.[25]

His claim for damages and attorney's fees must be denied because PNB did not violate his rights.[26]

Dissatisfied with the decision of the Labor Arbiter, both Velasco[27] and PNB[28] appealed to the NLRC.

On July 31, 2000, the NLRC affirmed with modification the Labor Arbiter decision, disposing, thus:

> WHEREFORE, the decision appealed from is hereby MODIFIED to the extent that the award of unpaid salaries is hereby REDUCED to the complainant's salaries from May 27, 1996 to July 31, 1996. Other dispositions in the appealed decision stands (*sic*) affirmed.[29]

In sustaining the Labor Arbiter, the NLRC held that Velasco's lack of knowledge of the non-posting of his withdrawal is not credible. Even a cursory look at his passbook shows that no deposit of US$15,000.00 was ever made. That there was still a balance of more than US$15,000.00 in his account after the withdrawal he made on June 30, 1995 could only mean that the withdrawal was never posted. Worse, based also on the entries in his passbook, it is clear that the withdrawal on June 30, 1995 was a "no-book" transaction. The withdrawal of US$15,000.00 was not taken into consideration in the determination of the balance of June 30, 1995 and the succeeding dates. Thus, it is clear that the entry in question was falsified. It was made merely to bolster his subsequent claim that he presented his passbook when he withdrew on June 30, 1995.[30]

The NLRC concluded that the falsification of the passbook shows deceit on the part of Velasco. He took advantage of

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[25] *Id.*

[26] *Id.* at 105-106.

[27] Annex "T".

[28] Annex "U".

[29] *Rollo,* p. 114.

[30] *Id.* at 112-113.

his position. The posting of the falsified entry could not have been made without, or was at least facilitated by, his being an employee of the bank. Thus, his subsequent withdrawals amounted to losses on the part of the bank. He made those withdrawals from his account with full knowledge that the balance of his passbook of more than US$15,000.00 was attributed to the non-posting of the June 30, 1995 withdrawal.[31]

The NLRC also held that he had been preventively suspended for more than thirty (30) days as of May 27, 1996. Since he was paid his salaries from August 1, 1996 to October 31, 1996, he may recover only his salary from May 27, 1996 to July 31, 1996.[32]

Like the Labor Arbiter, the NLRC held that Velasco may not recover damages. His dismissal was not done oppressively or in bad faith. Neither was he subjected to unnecessary embarrassment or humiliation.[33]

His motion for reconsideration having been denied, Velasco elevated the matter to the CA by way of petition for review on *certiorari* under Rule 43 of the Rules of Court.[34] On April 22, 2004, the CA rendered the assailed decision, the *fallo* stating, thus:

> WHEREFORE, for the foregoing discussions, We **REVERSE** and **SET ASIDE** the findings of public respondent NLRC and Labor Arbiter and hereby enter a decision ordering PNB to pay petitioner a separation pay equivalent to half-month salary for every year of service, plus backwages from the time of his illegal termination up to the finality of this decision.
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> SO ORDERED.[35]

According to the CA, the failure of Velasco to present his passbook and a letter of introduction does not constitute

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[31] *Id.* at 113.

[32] *Id.*

[33] *Id.* at 114.

[34] Annex "W".

[35] *Rollo,* pp. 88-89.

misconduct. Assuming for the sake of argument that he committed a serious misconduct in not properly monitoring his account with ordinary diligence and prudence, the same may be said of PNB when it failed to make the necessary posting of his withdrawal.[36] Lastly, the alleged offense of Velasco is not work-related to constitute just cause for his dismissal.[37]

Issues

PNB has filed the instant petition for review on *certiorari*, putting forth the following issues for Our resolution, *viz.*:

I. WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN FINDING THAT RESPONDENT HAS BEEN ILLEGALLY DISMISSED BY THE PETITIONERS.

II. WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN DIRECTING PNB TO PAY RESPONDENT SEPARATION PAY AND BACKWAGES.[38] (Underscoring supplied)

We add a third issue which was raised by PNB before the CA but was, however, left unresolved: whether Velasco took the correct recourse when he elevated the decision of the NLRC to the CA by way of petition for review on *certiorari* under Rule 43.

Our Ruling

I. *Appeal does not lie from the decision of the NLRC.*

We first address the procedural question on the propriety of the Rule 43 petition. Rule 43 provides for appeal from quasi-judicial agencies to the CA by way of petition for review. Petition for review on *certiorari* or appeal by *certiorari* is a recourse to the Supreme Court under Rule 45.

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[36] *Id.* at 85-86.

[37] *Id.* at 86.

[38] *Id.* at 413.

The mode of appeal resorted to by Velasco is wrong because appeal is not the proper remedy in elevating to the CA the decision of the NLRC. Section 2, Rule 43 of the 1997 Rules of Civil Procedure is explicit that Rule 43 "shall not apply to judgments or final orders issued under the Labor Code of the Philippines."

The correct remedy that should have been availed of is the special civil action of *certiorari* under Rule 65. As this Court held in the case of *Pure Foods Corporation v. NLRC*,[39] "the party may also seasonably avail of the special civil action for *certiorari*, where the tribunal, board or officer exercising judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer."[40] In any case, *St. Martin Funeral Homes v. National Labor Relations Commission*[41] settled any doubt as to the manner of elevating decisions of the NLRC to the CA by holding that "the legislative intendment was that the special civil action of *certiorari* was and still is the proper vehicle for judicial review of decisions of the NLRC."[42]

That the decision of the NLRC is not subject to appeal could have been a ground for the CA to dismiss the appeal of Velasco.[43] But even assuming, *arguendo*, that his petition could be liberally treated as one for *certiorari* under Rule 65, the recourse should not have prospered.

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[39] G.R. No. 78591, March 21, 1989, 171 SCRA 415.

[40] *Id.* at 424.

[41] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[42] *St. Martin Funeral Homes v. National Labor Relations Commission, id.* at 507.

[43] Rules of Civil Procedure (1997), Sec. 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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(i) The fact that the order or judgment appealed from is not appealable.

II. *Velasco committed serious misconduct, hence, his dismissal is justified.*

Article 282 of the Labor Code enumerates the just causes where an employer may terminate the services of an employee,[44] to wit:

a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b) Gross and habitual neglect by the employee of his duties;

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

e) Other causes analogous to the foregoing.

In *Austria v. National Labor Relations Commission*,[45] the Court defined misconduct as "improper and wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[46] In *Camus v. Civil Service Board of Appeals*,[47] misconduct

[44] As contradistinguished with Article 285 of the Labor Code, which enumerates the instances when an employee may terminate his employment relation with the employer, to wit: (1) Serious insult by the employer or his representative on the honor and person of the employee; (2) Inhuman and unbearable treatment accorded the employee by the employer or his representative; (3) Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and (4) Other causes analogous to any of the foregoing.

[45] G.R. No. 124382, August 16, 1999, 312 SCRA 410.

[46] *Austria v. National Labor Relations Commission, id.* at 429, citing *Cosep v. National Labor Relations Commission,* G.R. No. 124966, June 16, 1998, 290 SCRA 704.

[47] 112 Phil. 301 (1961).

was described as "wrong or improper conduct."[48] It implies a wrongful intention and not a mere error of judgment.[49]

Of course, ordinary misconduct would not justify the termination of the services of an employee. The law is explicit that the misconduct should be serious. It is settled that in order for misconduct to be serious, "it must be of such grave and aggravated character and not merely trivial or unimportant."[50] As amplified by jurisprudence, the misconduct must (1) be serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.[51]

Measured by the foregoing yardstick, We rule that Velasco committed serious misconduct that warrants termination from employment.

A. The misconduct is serious. Velasco violated bank rules when he transacted a "no-book" withdrawal by his failure to present his passbook to the PNB Ligao, Albay Branch on June 30, 1995. Section 1216 of the Manual of Regulations for Banks and Other Financial Intermediaries state that "[b]anks are prohibited from issuing/accepting 'withdrawal authority slips' or any other similar instruments designed to effect withdrawals of savings deposits without following the usual practice of requiring the depositors concerned to present their passbooks and accomplishing the necessary withdrawal slips."

Further, he failed to present any letter of introduction as mandated under General Circular 3-72-92 which requires that

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[48] *Camus v. Civil Service Board of Appeals, id.* at 306.

[49] *Id.*, citing *In re Morilleno,* 43 Phil. 212, 214 (1922).

[50] *Austria v. National Labor Relations Commissions, supra* note 47.

[51] *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission,* G.R. No. 124617, April 28, 2000, 331 SCRA 237, 246; *Molato v. National Labor Relations Commission,* G.R. No. 113085, January 2, 1997, 266 SCRA 42, 46; *Aris Philippines, Inc. v. National Labor Relations Commission,* G.R. No. 97817, November 10, 1994, 238 SCRA 59, 62.

"[b]efore going out-of-town, the Depositor secures a Letter of Introduction from the branch/office where his Peso Savings Account is maintained."

The presentation of passbook and letter of introduction is not without a valid reason. As aptly stated by the IAD of PNB:

> Considering that the PNB Ligao, Albay Branch is an offline branch, it is a must that an LOI and the passbook be presented by the depositor before any withdrawal is allowed. This procedure is required in order for the negotiating branch to determine or ascertain the available balance and the specimen signature of the withdrawing party. Moreover, the maintaining branch upon issuance of the LOI shall place a "hold" on the account in the computer as an internal control procedure.[52]

True, a strict reading of General Circular 3-72-92 would lead one to conclude that only persons with peso savings account are required to secure a letter of introduction. However, simple logic dictates that those maintaining dollar savings account are also included. No cogent reason would be served by the rule if only persons with peso savings account are required to get a letter of introduction. Otherwise, there can be a circumvention of the rule. *Nemo potest facere per alium qud non potest facere per directum*. No one is allowed to do indirectly what he is prohibited to do directly. ***Sinuman ay hindi pinapayagang gawin nang hindi tuwiran ang ipinagbabawal gawin nang tuwiran.***

As an audit officer, Velasco should be the first to ensure that banking laws, policies, rules and regulations, are strictly observed and applied by its officers in the day-to-day transactions. The banking system is an indispensable institution in the modern world. It plays a vital role in the economic life of every civilized nation. Whether banks act as mere passive entities for the safekeeping and saving of money, or as active instruments of business and commerce, they have become an ubiquitous presence among the citizenry, who

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[52] CA *rollo,* p. 99.

have come to regard them with respect and even gratitude and, most of all, confidence.[53]

The CA, however, opined that the failure of Velasco to abide by the rules is not serious misconduct because (1) from the admission of PNB itself, allowing bank personnel who are out-of-town to make a "no-book" transaction without a letter of introduction is considered a common practice, and (2) the approving officers of PNB Ligao Branch should have also been administratively charged considering that the "no-book" transaction could not have pushed through without their approval.[54]

In *Santos v. San Miguel Corporation*,[55] petitioner, in his defense, cited the prolonged practice of payroll personnel, including persons in managerial levels, of encashing personal checks. Finding this argument unmeritorious, the Court held that "[p]rolonged practice of encashing personal checks among respondent's payroll personnel does not excuse or justify petitioner's misdeeds. Her willful and deliberate acts were in gross violation of respondent's policy against encashment of personal checks of its personnel, embodied in its Cash Department Memorandum dated September 6, 1989."[56] The Court even added that petitioner "cannot feign ignorance of such memorandum as she is duty-bound to keep abreast of company policies related to financial matters within the corporation."[57] We apply the same principle here.

Suffice it to state that the option of who to charge or punish belongs to PNB. As an employer, PNB is given the latitude to determine who among its erring employees should be punished, to what extent and what penalty

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[53] *Simex International (Manila), Inc. v. Court of Appeals,* G.R. No. 88013, March 19, 1990, 183 SCRA 360, 366-367.

[54] *Rollo,* pp. 84-85.

[55] G.R. No. 149416, March 14, 2003, 399 SCRA 172.

[56] *Santos v. San Miguel Corporation, id.* at 183.

[57] *Id.*; see also *San Miguel Corporation v. National Labor Relations Commission,* G.R. No. 50321, March 13, 1984, 128 SCRA 180.

to impose.[58] Too, by charging Velasco, PNB is not estopped from charging its other employees who might as well have been remiss with their job.

Of course, We are not unaware that Velasco had a change of heart. In his sworn Letter-Explanation February 12, 1996, he admitted that his June 30, 1995 withdrawal of US$15,000.00 was a "no-book" transaction. However, in his sworn Answer dated April 30, 1996, he claimed that he actually presented his passbook when he withdrew on June 30, 1995.

To recall, he was charged with dishonesty, grave misconduct, and/or conduct grossly prejudicial to the best interest of the service for irregularly handling his dollar savings account. Thus, it is safe to assume that when he prepared his February 12, 1996 sworn Letter-Explanation, the circumstances surrounding his June 30, 1995 withdrawal at PNB Ligao, Albay Branch were still fresh on his mind. The allegations against him were serious, which should have put him on guard from preparing a haphazard explanation. He should have been mindful that dire consequences would surely befall him should the charges against him be proven. Lest it be forgotten, the no-book withdrawal was confirmed by the concerned officers of PNB Ligao, Albay Branch, namely, Quiambao, Gacer, and Letada. These circumstances, taken together, lead to no other conclusion than that Velasco changed his explanation from "no-book" to "with book" transaction after realizing that he violated bank rules and regulations.

Perez v. People,[59] is illustrative on this score. Perez, an acting municipal treasurer, submitted two contradicting answers explaining the location of the missing funds under his custody and control: the first, reiterating his previous verbal admission before the audit team that part of the money was used to pay for the loan of his late brother, another portion was spent for the food of his family, and the rest for his medicine; and the

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[58] See *Soriano v. National Labor Relations Commission*, G.R. No. 75510, October 27, 1987, 155 SCRA 124.

[59] G.R. No. 164763, February 12, 2008.

second, claiming that the alleged missing amount was in the possession and custody of his accountable personnel at the time of the audit examination.

This Court held that the sudden turnaround of Perez was merely an afterthought. He "only changed his story to exonerate himself, after realizing that his first Answer put him in a hole, so to speak."[60] Neither did the Court believe that his alleged sickness affected the preparation of his first Answer. Perez "presented no convincing evidence that his disease at the time he formulated that Answer diminished his capacity to formulate a true, clear and coherent response to any query. In fact, its contents merely reiterated his verbal explanation to the auditing team on January 5, 1989 on how he disposed of the missing funds."[61]

We find no cogent reason to depart from Our ruling in *Perez*. The claim of Velasco that his initial answer was made under pressing circumstances is too flimsy an excuse. It partakes of the nature of an alibi. As such, it constitutes a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.[62] The Court has consistently frowned upon the defense of alibi, and received it with caution, not only because it is inherently weak and unreliable but also because it can be easily fabricated.[63]

Also worth noting is that Velasco never imputed any ill motive on the part of Rexor, Gacer, and Letada who collectively narrated that the June 30, 1995 withdrawal was a no-book transaction. They confirmed his earlier version that he did not present his passbook when he withdrew the US$15,000.00 on June 30, 1995. In any case, the fact that he changed his stance puts his

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[60] *Perez v. People, id.* at 11.

[61] *Id.* at 13.

[62] *People v. Estomaca,* G.R. Nos. 134288-89, January 15, 2002, 373 SCRA 197.

[63] *People v. Villamor,* G.R. Nos. 140407-08 & 141908-09, January 15, 2002, 373 SCRA 254.

credibility in doubt. Was he lying when he submitted his sworn letter-explanation of February 12, 1996, or when he submitted his sworn Answer dated April 30, 1996? *Allegans contraria non est audiendus*. He is not to be heard who alleges things contradictory to each other. ***Hindi dapat pakinggan ang nagsasabi ng mga bagay na salungat sa isa't-isa.***

Velasco did not only violate bank rules and regulations. What compounds his offense was his unusual silence. He never informed PNB about the huge overstatement of US$15,000.00 in his account. He updated his passbook on October 6, 1995 by depositing US$12.78. Thus, as early as that date, he should have known that something was wrong with the credited balance in his passbook and reported it immediately to the concerned officers of PNB. What he did, instead, was to keep mum until PNB discovered the incident and notified him on February 7, 1996, or almost eight (8) months after his no-book withdrawal on June 30, 1995.

With his silence, he clearly intended to gain at the expense of PNB. The omission to report is not trivial or inconsequential because it gave him the opportunity to withdraw from his dollar savings account more than its real balance, as what he actually did. He took advantage of the overstatement of his account, instead of protecting the interest of the bank. It would be impossible for him not to detect the error at the time he deposited US$12.78 on October 6, 1995, because his account had a big balance despite the fact that no large amount of money was deposited.

His claim that he was satisfied with the updated balance of US$15,486.01 on October 6, 1995, as he thought that the US$15,000.00 in his account was the amount given by his brother, is simply unbelievable. It is a desperate attempt at exculpation. The deposit of the money from his brother should have been reflected in the on-line computer of PNB. The deposit would have also been posted for update upon the presentation of the passbook on October 6, 1995. No deposit of US$15,000.00 was, however, reflected in the passbook.

In *Aboitiz Shipping Corporation v. Dela Serna*,[64] *Tiu v. National Labor Relations Commission*,[65] *Five J Taxi v. National Labor Relations Commission*,[66] and *Falguera v. Linsangan*,[67] among other cases, this Court consistently held that factual findings of quasi-judicial agencies, which have acquired expertise in matters entrusted to their jurisdiction, are accorded not only respect but also finality if they are supported by substantial evidence.[68] Thus, in the absence of proof that the Labor Arbiter or the NLRC had gravely abused their discretion, this Court shall deem conclusive and will not overturn their particular factual findings.[69]

The Labor Arbiter and the NLRC are in unison that Velasco transacted a no-book withdrawal and failed to present a letter of introduction at PNB Ligao, Albay Branch on June 30, 1995. He also forged his passbook to cover up his offense. Being duly supported by substantial evidence, We sustain said finding. Fitness for continued employment cannot be compartmentalized

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[64] G.R. No. 88538, July 25, 1991, 199 SCRA 568.

[65] G.R. No. 83433, November 12, 1992, 215 SCRA 540.

[66] G.R. No. 111474, August 22, 1994, August 22, 1994, 235 SCRA 556.

[67] G.R. No. 114848, December 14, 1995, 251 SCRA 364.

[68] See also *German Marine Agencies, Inc. v. National Labor Relations Commission,* G.R. No. 142049, January 30, 2001, 350 SCRA 629, 646, citing *Travelaire & Tours Corporation v. National Labor Relations Commission,* G.R. No. 131523, August 20, 1998, 294 SCRA 505; *Suarez v. National Labor Relations Commission,* G.R. No. 124723, July 31, 1998, 293 SCRA 496; *Autobus Workers' Union v. National Labor Relations Commission,* G.R. No. 117453, June 26, 1998, 291 SCRA 219; *Prangan v. National Labor Relations Commission,* G.R. No. 126529, April 15, 1998, 289 SCRA 142; *International Pharmaceuticals, Inc. v. National Labor Relations Commission,* G.R. No. 106331, March 9, 1998, 287 SCRA 213; *Villa v. National Labor Relations Commission,* G.R. No. 117043, January 14, 1998, 284 SCRA 105.

[69] *Id*. at 647, citing *Gandara Mill Supply v. National Labor Relations Commission,* G.R. No. 126703, December 29, 1998, 300 SCRA 702; *National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission,* G.R. No. 125561, March 6, 1998, 287 SCRA 192.

into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other. A service of irregularities, when combined, may constitute serious misconduct which is a just cause for dismissal.[70]

B. The serious misconduct relates to the performance of duties. The CA ruled that the offense of Velasco was not work-related and does not warrant dismissal. It likewise held that there is no proof that his failure to be a good depositor affected his duties or performance as an employee of PNB.[71]

At first glance, the acts committed by Velasco pertain only to his being a depositor of PNB. But he has a dual personality. He was a depositor and, at the same time, an officer of the bank.

On one hand, he failed to present his passbook and a letter of introduction when he withdrew US$15,000.00 at PNB Ligao, Albay Branch on June 30, 1995. This serious misconduct was aggravated when he presented a falsified passbook to make it appear that he did not commit any misdeed. On the other hand, he worked for PNB for eighteen (18) long years, his last position having been as Manager 1 of the IAD. As such, he was involved in the examination of the books of account of PNB. Thus, when he violated bank rules and regulations and tried to cover up his infractions by falsifying his passbook, he was not only committing them as a depositor but also, or rather more so, as an officer of the bank. It is akin to falsification of time cards,[72] and circulation of fake meal tickets,[73] which this Court held as a just cause for terminating the services of an employee.

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[70] *Piedad v. Lanao del Norte Electric Cooperative, Inc.,* G.R. No. 73735, August 31, 1987, 153 SCRA 500, 509, citing *National Service Corporation v. Leogardo, Jr.,* G.R. No. 64296, July 20, 1984, 130 SCRA 502; see also *Gustilo v. Wyeth Philippines, Inc.,* G.R. No. 149629, October 4, 2004, 440 SCRA 67, 75.

[71] *Rollo,* pp. 86-87.

[72] See *San Miguel Corporation Employees Union v. Ferrer-Calleja,* G.R. No. 80141, July 5, 1989, 175 SCRA 85.

[73] *Ibarrientos v. National Labor Relations Commission,* G.R. No. 75277, July 31, 1989, 175 SCRA 761.

C. Velasco has become unfit to continue working at PNB. Taken together, his acts render him unfit to remain in the employ of the bank. That it is his first offense is of no moment because he holds a managerial position. Employers are allowed wide latitude of discretion in terminating managerial employees who, by virtue of their position, require full trust and confidence in the performance of their duties.[74] Managerial employees like Velasco are tasked to perform key and sensitive functions and are bound by more exacting work ethics.[75] Indeed, not even his eighteen (18) years of service could exonerate him. As this Court held in *Equitable PCIBank v. Caguioa*:[76]

> The leniency sought by respondent on the basis of her 35 years of service to the bank must be weighed in conjunction with the other considerations raised by petitioners. As that service has been amply compensated, her plea for leniency cannot offset her dishonesty. Even government employees who are validly dismissed from the service by reason of timely discovered offenses are deprived of retirement benefits. Treating respondent in the same manner as the loyal and code-abiding employees, despite the timely discovery of her Code violations, may indeed have a demoralizing effect on the entire bank. Be it remembered that banks thrive on and endeavor to retain public trust and confidence, every violation of which must thus be accompanied by appropriate sanctions.[77]

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[74] *Mendoza v. National Labor Relations Commission,* G.R. No. 131405, July 20, 1999, 310 SCRA 846; see also *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516; *Tan v. National Labor Relations Commission,* G.R. No. 128290, November 24, 1998, 299 SCRA 169, 183; *Filipro, Incorporated v. National Labor Relations Commission,* G.R. No. 70546, October 16, 1986, 145 SCRA 123; *Lamsan Trading, Inc. v. Leogardo, Jr.,* G.R. No. 73245, September 30, 1986, 144 SCRA 571; *Metro Drug Corporation v. National Labor Relations Commission,* G.R. No. 72248, July 22, 1986, 143 SCRA 132; *San Miguel Corporation v. National Labor Relations Commission,* G.R. No. 70177, June 25, 1986, 142 SCRA 376.

[75] *Gonzales v. National Labor Relations Commission,* G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[76] G.R. No. 159170, August 12, 2005, 466 SCRA 686.

[77] *Equitable PCIBank v. Caguioa, id.* at 698.

III. ***The CA erred in directing PNB to pay Velasco separation pay and backwages. PNB has no other liability to Velasco, except his unpaid wages from May 27, 1996 to July 31, 1996.***

PNB was registered under the Corporation Code under SEC Reg. No. ASO 96-005555 dated May 27, 1996.[78] Thus, on that day, employees of PNB came under the jurisdiction of the Labor Code, whose Sections 8 and 9 of Rule XXIII, Book V of the Implementing Rules state:

> Section 8. *Preventive Suspension*. – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.
>
> Section 9. No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

PNB has the right to preventively suspend Velasco during the pendency of the administrative case against him. It was obviously done as a measure of self-protection. It was necessary to secure the vital records of PNB which, in view of the position of Velasco as internal auditor, are easily accessible to him.

Velasco was preventively suspended for more than thirty (30) days as of May 27, 1996, while the records bear that Velasco was paid his salaries from August 1, 1996 to October 31, 1996.[79] Thus, the NLRC is correct in its holding that he may recover his salaries from May 27, 1996 to July 31, 1996.

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[78] *Rollo,* p. 165.

[79] *Rollo,* p. 258; Annex "1".

He is not entitled to separation and backwages because he was not illegally dismissed.[80] We note though that PNB was not at all insensitive to his plight, considering (1) his restitution of the amount akin to no actual loss to the bank, and (2) his length of service of eighteen (18) years.[81] As stated earlier, PNB imposed on Velasco the penalty of forced resignation with benefits, instead of dismissal. The records bear out that he was granted ₱542,110.75 as separation benefits[82] which was used to offset his loan in the bank, leaving an outstanding balance of ₱167,625.82 as of May 27, 1997.[83] We find that PNB acted humanely under the circumstances.

One last word.

The law imposes great burdens on the employer. One needs only to look at the varied provisions of the Labor Code. Indeed, the law is tilted towards the plight of the working man. The Labor Code is titled that way and not as "Employer Code." As one American ruling puts it, the protection of labor is the highest office of our laws.[84]

Corollary to this, however, is the right of the employer to expect from the employee no less than adequate work, diligence and good conduct.[85] As Mr. Justice Joseph McKenna of the United States Supreme Court said in *Arizona Copper Co. v. Hammer*,[86] "[t]he difference between the position of the employer

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[80] See Labor Code, Art. 279; *Philippine Carpet Employees Association v. Philippine Carpet Manufacturing Corporation,* G.R. Nos. 140269-70, September 14, 2000, 340 SCRA 383.

[81] *Rollo,* p. 164.

[82] CA *rollo,* p. 200.

[83] *Id.* at 203.

[84] *Ex parte Newman,* 9 Cal. 502, 521 (1858).

[85] *Coca-Cola Bottlers Philippines Incorporated v. National Labor Relations Commission,* G.R. Nos. 82580 & 84075, April 25, 1989, 172 SCRA 751; *Firestone Tire and Rubber Co. of the Phils. v. Lariosa,* G.R. No. 70479, February 27, 1987, 148 SCRA 187.

[86] 250 US 400 (1919).

and the employee, simply considering the latter as economically weaker, is not a justification for the violation of the rights of the former."[87]

WHEREFORE, the petition is *GRANTED* and the appealed Decision *REVERSED* and *SET ASIDE*. The Decision of the National Labor Relations Commission is *REINSTATED*.

SO ORDERED.

Chico-Nazario (Acting Chairperson),[*] *Tinga,*[**] *Velasco, Jr.,*[**] and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174899. September 11, 2008]

RAMON L. UY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LOAN; NEGATED BY EVIDENCE CONFIRMING THAT TRANSACTION ENTERED INTO IS AN INVESTMENT AGREEMENT. — We first rule on the issue of whether or not the contract between petitioner and private complainant was one of loan. After going over the records and testimonies of the witnesses, we are convinced that the transaction that was entered into was an Investment

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[87] *Arizona Copper Co. v. Hammer, id.* at 437.

[*] Vice Associate Justice Consuelo Ynares-Santiago as chairperson. Justice Ynares-Santiago is on official leave per Special Order No. 516 dated August 27, 2008.

[**] Designated as additional members vice Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

Agreement and not a simple loan. It is very clear from the document signed by both petitioner and private complainant that private complainant shall invest ₱3,500,000.00 in the development of parcel of land (owned by petitioner and located at Agusan, Cagayan de Oro City covered by Transfer Certificate of Title No. 61746) into a low-cost housing subdivision to be undertaken by petitioner. It is apparent from the face of the document that the land to be developed is located in Agusan, Cagayan de Oro. Petitioner denied entering into an investment agreement. His denial, however, will not prevail over the clear and unequivocal provisions of the investment contract. As testified to by private complainant, it was petitioner who had proposed the investment agreement and the document contained the latter's suggestions. Because they have reduced their agreement into writing, whatever previous or contemporaneous agreements they had, whether verbal or in writing, are merged in said written agreement.

2. CRIMINAL LAW; ESTAFA; ELEMENTS. — Estafa, under Article 315, par. 2, of the Revised Penal Code, is committed by any person who defrauds another by using a fictitious name; or falsely pretends to possess power, influence, qualifications, property, credit, agency, because or imaginary transactions; or by means of similar deceits executed prior to or simultaneously with the commission of fraud. Under this class of estafa, the element of deceit is indispensable. The elements of Estafa by means of deceit as defined under Article 315(2)(a) of the Revised Penal Code are as follows: (1) there must be false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he must have been induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) as a result thereof, the offended party suffered damage.

3. ID.; ID.; ID.; FRAUD; ELUCIDATED. — Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another; or by which another is unduly and unconscientiously taken advantage of another. It is a generic

term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth; and includes all forms of surprice, trick, cunning, dissembling and any other unfair way by which another is cheated. Deceit is a species of fraud. And deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations; or by concealment of that which should have been disclosed, which deceives or is intended to deceive another so that he shall act upon it, to his legal injury. The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROSECUTOR TO CHARGE CRIME BASED ON HIS ASSESSMENT OF EVIDENCE. — Under Section 5, Rule 110 of the Revised Rules of Criminal Procedure, criminal actions shall be prosecuted under the direction and control of the prosecutor. In the case before us, the prosecutor, after going over the complaint found probable cause to charge him with estafa. This was the prosecutor's prerogative, considering that he was the one who would prosecute the case. The prosecuting attorney cannot be compelled to file a particular criminal information. The fact that the demand letter may suggest a violation of Batas Pambansa Blg. 22 cannot control his action as to what charge he will file, if he sees evidence showing probable cause to charge an accused for another crime. It is the prosecutor's assessment of the evidence before him which will prevail, and not what is contained in a demand letter.

5. ID.; ID.; DUE PROCESS; AFFORDED WHERE ACCUSED INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM AND HE WAS GIVEN OPPORTUNITY TO DISPROVE EVIDENCE AGAINST HIM. — There can be no denial of due process because petitioner was informed of the nature and cause of the accusation against him when he was

arraigned. He was charged with estafa, and he pleaded not guilty thereto. He was given the opportunity to disprove the evidence against him. The fact that he was arraigned and was tried according to the rules of court undeniably shows he was accorded due process.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION; ELUCIDATED. — A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto. A contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid per se; they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.

7. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; PENALTY; PROPER PENALTY APPLYING THE INDETERMINATE SENTENCE LAW; ELUCIDATED.— The penalty for estafa by means of deceit is provided in Article 315 of the Revised Penal Code: 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, 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 twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. Under this paragraph, the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period is the imposable penalty if the amount defrauded is over ₱12,000.00 but not over ₱22,000.00. If the amount defrauded exceeds ₱22,000.00, the penalty provided shall be imposed in its maximum period, with one year added for each additional ₱10,000.00. The total penalty, however, shall not exceed twenty years. Under

the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which in view of the attending circumstances, could be properly imposed" under the Revised Penal Code and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The range of the penalty provided for in Article 315 is composed of only two periods, thus, to get the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three. Article 65 of the same code requires the division of the time included in the prescribed penalty into three equal periods of time, forming one period for each of the three portions. The maximum, medium and minimum periods of the prescribed penalty are therefore: Minimum period – 4 years, 2 months and 1 day to 5 years, 5 months and 10 days. Medium period – 5 years, 5 months and 11 days to 6 years, 8 months and 20 days. Maximum period – 6 years, 8 months and 21 days to 8 years.

8. ID.; ID.; ID.; ID.; CASE AT BAR.— The amount defrauded being in excess of ₱22,000.00, the penalty imposable should be the maximum period of six years, eight months, and twenty-one days to eight years of *prision mayor*. However, Art. 315 also provides that an additional one year shall be imposed for each additional ₱10,000.00. The penalty should be termed as *prision mayor* or *reclusion temporal*, as the case may be. Here, considering that the total amount of the fraud is ₱3,500,000.00, the corresponding penalty obviously reaches the twenty-year limit. Thus, the correct imposable maximum penalty is twenty years of *reclusion temporal*. The minimum period of the indeterminate sentence, on the other hand, should be within the range of the penalty next lower than that prescribed by Article 315(2)(a), Revised Penal Code, for the crime committed. The penalty next lower than *prision correccional* maximum to *prision mayor* minimum is *prision correccional* minimum (six months and one day to two years and four months) to *prision correccional* medium (two years, four months and one day to four years and two months).

9. ID.; ID.; CIVIL PENALTY IN CASE AT BAR. — We agree with both lower courts that petitioner should be ordered to pay private complainant the amount of ₱4,500,000.00 as actual damages representing private complainant's investment and unrealized profit pursuant to the Investment Agreement. The

12% interest per annum on said amount as imposed by the lower courts from 30 May 1996 should be reduced to 6% per annum in accordance with the Investment Agreement. After this decision has become final, the interest thereon shall be 12% per annum.

APPEARANCES OF COUNSEL

Magno & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* which seeks to set aside the Decision[1] of the Court of Appeals in CA-G.R. CR No. 28581 dated 2 March 2006 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 64, in Criminal Case No. 98-1065, finding petitioner Ramon L. Uy guilty of Estafa as defined and penalized under Article 315, paragraph 2 of the Revised Penal Code, and its Resolution[3] dated 9 October 2006 denying petitioner's Motion for Reconsideration.

On 19 May 1998, petitioner was charged before the RTC of Makati City with Estafa under Article 315, par. 2 of the Revised Penal Code, allegedly committed as follows:

That sometime in November 1995, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud Mr. Eugene Yu, as follows, to wit: The said accused under false and fraudulent representations which he made to said Eugene Yu convinced said Eugene Yu to invest

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[1] Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring. CA *rollo*, pp. 119-127.

[2] Records, pp. 350-358.

[3] CA *rollo*, pp. 197-199.

in the said low cost housing project in the amount of ₱3,500,000.00 and by means of other similar deceit, which representations he well knew were false and fraudulent and were only made to induce the aforementioned Eugene Yu to give and deliver as in fact the said Eugene Yu gave and delivered the said amount of ₱3,500,000.00 to the accused, to the damage and prejudice of said Mr. Eugene Yu in the said amount of ₱3,500,000.00, Philippine Currency.[4]

On the same date, the case was docketed as Criminal Case No. 98-1065 and raffled to Branch 64. Finding reasonable ground to believe that a criminal act had been committed and that petitioner was probably guilty thereof, the trial court issued a warrant for his arrest.[5] On 31 August 1998, considering that the warrant of arrest had been returned unserved, the case was archived and an *alias* warrant of arrest was issued.[6]

On 27 June 2000, petitioner submitted himself to the jurisdiction of the trial court and filed a bailbond for his provisional liberty.[7]

When arraigned on 4 June 2000, appellant, with the assistance of counsel *de parte*, pleaded "not guilty" to the crime charged.[8]

For failure of petitioner to appear in the scheduled pre-trial on 7 September 2000 despite notice, his bailbond was cancelled and an order of arrest was issued against him.[9]

On 28 September 2000, the trial court, upon motion of private complainant Eugene Yu, issued a Hold Departure Order against accused-appellant.[10]

On 16 November 2000, the pre-trial conference of the case proceeded without the presence of the petitioner or his counsel

[4] Records, p. 1.

[5] *Id.* at 34.

[6] *Id.* at 39.

[7] *Id.* at 58.

[8] *Id.* at 62.

[9] *Id.* at 75.

[10] *Id.* at 95.

de parte. A counsel *de oficio* was appointed only for the purpose of pre-trial.[11]

On 12 December 2000, the trial court, upon motion of petitioner, lifted the order of arrest and confiscation of bailbond.[12]

The prosecution presented the following witnesses, namely: (1) private complainant Eugene Yu;[13] (2) Patricia L. Yu, spouse of private complainant;[14] and (3) Atty. Wilfredo I. Imperial, Director, Executive Services Group, Housing and Land Use Regulatory Board (HLURB).[15]

The version of the prosecution is as follows:

Private complainant Eugene Yu first met petitioner Ramon L. Uy in Bacolod City in 1993 during a convention of the Chamber of Real Estate and Builders' Association, Inc. (CREBA, INC.), of which they were both members. Petitioner represented himself as a businessman and developer of low-cost housing and President of Trans-Builders Resources and Development Corporation. Becoming friends, petitioner and private complainant entered into a business venture in 1995 involving a project in Parañaque City, with the former as developer and the latter as exclusive marketer.

Thereafter, petitioner proposed to private complainant a plan to develop low-cost housing in Cagayan de Oro. Initially, petitioner attempted to convince private complainant to agree to jointly develop the project, but the proposed scheme did not materialize. Eventually, however, petitioner was able to get private complainant to agree to an investment portfolio, whereby private complainant was to give the amount of ₱3,500,000.00 to petitioner who, in turn, would pay private complainant the amount of

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[11] *Id.* at 109.

[12] *Id.* at 123.

[13] TSN, 28 September 2000 (Motion for Issuance of Hold Departure Order); 9 January 2001; 13 February 2001; 13 March 2001).

[14] TSN, 24 May 2001.

[15] TSN, 11 April 2002.

₱4,500,000.00 by the end of May 1996. The additional ₱1,000,000.00 was the interest on his investment.

Petitioner proposed to come up with an investment agreement. Private complainant requested his lawyer, Atty. Dennis Perez, to prepare an investment agreement containing the suggestions of petitioner.[16] On 28 October 1995, in the office of Atty. Perez, private complainant and petitioner signed an undated Investment Agreement.[17] Before signing the document, petitioner went over the same thoroughly. The agreement contained, among other provisions, the following:

> WHEREAS, FIRST PARTY is the registered owner and developer of parcel of land located at Agusan, Cagayan de Oro City covered by Transfer Certificate of Title No. 61746 issued by the Register of Deeds of Cagayan de Oro and which is more particularly described as follows:
>
> x x x x x x x x x
>
> WHEREAS, the FIRST PARTY wishes to develop the above parcel [of] land into a low-cost housing subdivision;
>
> WHEREAS, the SECOND PARTY is willing to invest in the development of the above parcel of land;
>
> WHEREAS, the parties desire to execute this Investment Agreement for the purpose of investing in the development of the above parcel of land;
>
> NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants and stipulations hereinafter set forth, the parties hereto have agreed, and as they hereby agree, as follows:
>
> Section 1. The FIRST PARTY shall develop the above parcel of land in a low-cost housing subdivision;
>
> Section 2. The SECOND PARTY agrees to invest the amount of Three Million Five Hundred Thousand Pesos (₱3,500,000.00), Philippine Currency, in the construction and development costs of the FIRST PARTY, which amount shall be remitted to it immediately upon the signing of this Investment Agreement;

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[16] TSN, 29 March 2001, pp. 68-70.

[17] Exh. "A"; records, pp. 217-220.

Section 3. For and in consideration of the investment referred to in Section 2, the FIRST PARTY shall pay the amount of Four Million Five Hundred Thousand Pesos (₱4,500,000.00), Philippine Currency to the SECOND PARTY payable after six (6) months from the execution of this Investment Agreement. For this purpose, the FIRST PARTY shall issue post-dated check no. CD00371579951 drawn on Metrobank, Cagayan de Oro Branch in favor of the SECOND PARTY;

In the event that the amount due the SECOND PARTY or any part thereof is unpaid, the FIRST PARTY shall pay compounded interest at the rate of six percent (6%) on such amount or balance. The SECOND PARTY shall also have the option to acquire a portion(s) of the low-cost housing subdivision in lieu of payment of any unpaid amount or balance. Should the SECOND PARTY choose this option, the FIRST PARTY shall convey to the SECOND PARTY that portion which he chooses.

Section 4. It is hereby understood by the parties that Transfer Certificate of Title No. 61746, the Site Development Plan, House Plans and the Special Power of Attorney executed by Patricio Quisumbing, copies of which are hereto attached as Annexes "A", "B", "C" and "D", shall form integral parts of this Investment Agreement.

The signing was witnessed, among others, by Patricia Yu, wife of private complainant, and Atty. Perez. Simultaneous with the signing of the agreement, private complainant issued Asiatrust Bank Check No. 087918 dated 30 October 1995 payable to Trans-Builders Resources and Development Corporation in the amount of ₱3,500,000.00.[18] Petitioner, in turn, issued in favor of private complainant Metrobank Check No. 0371579951 dated "30 May 1995" in the amount of ₱4,500,000.00.[19]

The amount of ₱3,500,000.00 covered by Asiatrust Bank Check No. 087918 was debited against the account of private complainant and credited to the account of Trans-Builders Resources and Development Corporation. When private complainant deposited petitioner's Metrobank check to his savings account with Asiatrust Bank, the check was dishonored because it was "Drawn Against Insufficient Funds (DAIF)."[20] It was

[18] Exh. "B"; *id.* at 221.

[19] Exh. "C"; *id.* at 222.

[20] Exhs. "D" and "E"; *id.* at 223-224.

at this time that private complainant noticed that the check issued to him was dated 30 May 1995 instead of 30 May 1996.

From that time on, petitioner could no longer be located, and he ignored private complainant's efforts to collect on his investment. On 16 October 1996, private complainant, through his lawyer, sent a demand letter to petitioner to make good on his bounced check.[21]

Upon inquiry from the HLURB, private complainant learned that Trans-Builders Resources and Development Corporation had no ongoing low-cost housing project in Agusan, Cagayan de Oro City, as represented by petitioner and contained in the Investment Agreement. Atty. Wilfredo I. Imperial, Director, Executive Services Group of the HLURB, said that Trans-Builders Resources and Development Corporation had only three projects in Region 10, namely: (1) Transville Oroquieta 1- Oroquieta City, Misamis Occidental; (2) Transville Oroquieta 2 - Oroquieta City, Misamis Occidental; and (3) Transville Homes – Quezon, Bukidnon.[22]

Patricia Yu testified on the circumstances regarding the execution of the Investment Agreement and the issuance of the checks by private complainant and petitioner. She corroborated the statements of private complainant on these matters. Atty. Wilfredo I. Imperial testified that Trans-Builders Resources and Development Corporation did not have any ongoing low-cost housing project in Agusan, Cagayan de Oro City.

On 30 April 2002, the prosecution made its Formal Offer of Exhibits (with Motion for Additional Time to File HLURB Certification) consisting of Exhibits "A" to "G", inclusive, with sub-markings.[23] The trial court noted the offer and granted the motion.[24] On 24 May 2002, the prosecution made a Supplemental Offer of Evidence consisting of the HLURB

[21] Exh. "F"; *id.* at 225.

[22] Exhs. "G" and "H"; *id.* at 226 and 233.

[23] Records, pp. 210-216.

[24] *Id.* at 227.

certification which was marked Exhibit "H".[25] The trial court admitted the exhibits offered on 5 July 2002.[26]

For the defense, petitioner[27] took the stand.

Petitioner testified that his first business transaction with private complainant involved real property development in Parañaque in the middle of 1995, he being the developer and private complainant the exclusive marketer. In the middle of the planning of the Parañaque project, he, being in need of funds, offered private complainant a joint-venture agreement for his project in Cagayan de Oro. Nothing came out of this proposal. Petitioner likewise sought rediscounting of his check by private complainant, but the same did not materialize. Instead, private complainant made a counter-proposal wherein he would finance the ₱3,500,000.00 petitioner needed, payable within six to seven months with ₱1,000,000.00 interest.

Private complainant instructed his Makati-based lawyer to draft an agreement whereby he was to give petitioner the amount of ₱3,500,000.00 in exchange for the check he had earlier received from petitioner in the amount of ₱4,500,000.00, to be deposited at least six (6) months after petitioner had already encashed the ₱3,500,000.00 check given to him by private complainant on 28 October 2005.

Petitioner went to the law office of private complainant's lawyer in Makati and signed the Investment Agreement.[28] Before signing said document, petitioner told private complainant: "*Pare utang lang ito,* I issued a check, *bakit kailangan pa natin itong* investment agreement."[29] Private complainant replied that the document was just a formality.

Six months after the delivery of private complainant's Asiatrust check for ₱3,500,000.00 to petitioner, private complainant

[25] *Id.* at 229-232.

[26] *Id.* at 244.

[27] TSN, 27 March 2003 and 19 June 2003.

[28] Exh. "A"; Records, pp. 217-220.

[29] TSN, 27 March 2003, p. 16.

deposited the latter's Metrobank check for ₱4,500,000.00, which he had received in exchange for private complainant's Asiatrust check. The ₱4,500,000.00 Metrobank check deposited in private complainant's account was dishonored. Petitioner denied having received a demand letter from private complainant's lawyer.[30]

Petitioner declared that the contract between him and private complainant was a simple loan to finance his project in Mindanao.[31]

On 23 September 2003, the defense formally offered its evidence[32] consisting of Exhibits "1" to "5". On 9 October 2003, the prosecution formally offered petitioner's counter-affidavit as Exhibit I, with sub-markings. On 29 October 2003, the trial court admitted all the exhibits of the defense as well as the additional exhibit of the prosecution.[33]

On 17 June 2004, the trial court promulgated its decision convicting petitioner of the crime charged. The decretal portion of the decision reads:

> WHEREFORE, judgment is rendered finding accused RAMON UY GUILTY beyond reasonable doubt of the crime of Estafa and sentencing him to suffer the indeterminate imprisonment of TEN (10) YEARS ***prision mayo*r** medium, as minimum, to TWENTY (20) YEARS of ***prision temporal***, as maximum.
>
> The accused is ordered to pay complainant Eugene Yu the sum of ₱4,500,000 and plus twelve percent (12%) interest per annum from May 30, 1996 until payment is made, and to pay the cost of suit.[34]

In convicting petitioner, the trial court explained:

> The fact remains that the complainant and the accused signed an agreement which they denominated as "Investment Agreement." The

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[30] TSN, 19 June 2003, p. 10.

[31] TSN, 27 March 2003, p. 11.

[32] Records, pp. 281-282.

[33] *Id.* at 294.

[34] *Id.* at 358.

Agreement, having been signed by complainant and the accused is evidence of what is contained therein (Exh. A). The document speaks for itself. x x x.

x x x x x x x x x

Complainant Eugene Yu would not have agreed to part with his money or investment were it not for the representation of accused that Trans-Builders Resources and Development Corporation of which the accused is the President, has a low-cost housing project at Barrio Agusan, Cagayan de Oro City. The complainant's investment is therefore for a specific purpose which is "to develop a low cost housing project in Barrio Agusan, Cagayan de Oro City over a property owned and registered in the name of Trans-Builders under Transfer Certificate of Title no. 61746 issued by the Register of Deeds of Cagayan de Oro City."

The complainant gave to accused his investment thru ASIATRUST Check no. 087918 ₱3,500,000. He received from the accused the latter's check, Metrobank check no. CDO0371579951 in the amount of ₱4,500,000. Simultaneously with the exchange of the checks, the accused and complainant signed the Investment Agreement.

In sum, complainant Eugene Yu would not have agreed to part with his money or investment were it not for the following false pretenses and misrepresentations:

a) He represented that the 3.5 Million pesos will be invested in a low-cost housing project in Barrio Agusan, Cagayan de Oro.

b) He promised to pay the private complainant 4.5 Million pesos after six months from the execution of the investment agreement.

c) He promised that in the event that the 4.5. Million pesos is not paid, he shall pay the private complainant compounded interest at the rate of six percent (6%) on such amount. He also gave the private complainant the option to acquire a portion(s) of the low-cost housing in lieu of payment of any unpaid amount or balance.

d) He issued in favor of the private complainant Metrobank check no. CDO0371579951 worth 4.5 million pesos.

As the events would later on disclose, the accused or his company Trans Builders had no low cost housing project in Barrio Agusan Cagayan de Oro (Exhs. "G" and "H"). Likewise, at the appointed time, the accused failed to return the investment of complainant. Neither was the accused able to pay complainant the "compounded interest at the rate of six percent (6%) on such amount or balance," nor did he allow complainant "to acquire a portion(s) of the low cost housing subdivision in lieu of payment of any unpaid amount or balance" . . . . (Sec. 3 Investment Agreement, Exhibit A).

The check which the accused issued to complainant turned out to be a bum check because it was dishonored when presented for payment for the reason drawn against insufficient fund (DAIF).

x x x x x x x x x

From the foregoing, this court finds that the accused employed deceit upon complainant who relied upon said deceitful representations, and which deceitful acts occurred prior and/or simultaneous to the damage.

Thus, the accused Ramon Uy is GUILTY of ESTAFA as defined under Article 315 par. 2(a).[35]

On 21 June 2004, petitioner filed a Motion to Admit Bail[36] and a Notice of Appeal.[37]

The trial court approved the surety bond posted by petitioner and directed the latter's release from custody unless further detention was warranted in any other case.[38]

On 23 June 2004, the trial court ordered the transmittal of the records of the case to the Court of Appeals.[39]

On 2 March 2006, the Court of Appeals rendered its decision upholding petitioner's conviction, but reduced the minimum of

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[35] *Id.* at 355-357.

[36] *Id.* at 362-382.

[37] *Id.* at 383-384.

[38] *Id.* at 385.

[39] *Id.* at 386.

the indeterminate sentence imposed on him. The dispositive portion of the decision reads:

> WHEREFORE, the appeal is DENIED and the appealed Decision is AFFIRMED but with MODIFICATION on the minimum of the indeterminate sentence imposed which is hereby reduced to two (2) years and four (4) months of *prision correccional*.[40]

Petitioner filed a Motion for Reconsideration of the decision, but the appellate court denied it in its resolution dated 9 October 2006.

Hence, this Petition for Review on *Certiorari*.

As required by the Court, respondent, through the Office of the Solicitor General, and private complainant filed their comments on 19 March 2007 and 12 March 2007, respectively.[41] As directed, petitioner filed his consolidated reply to the comments.[42]

On 23 July 2007, the Court gave due course to the petition and required the parties to submit their respective memoranda.[43] All the parties filed their respective memoranda.[44]

Petitioner raises the following issues:

> I. Whether or not (the) Court of Appeals erred in finding the petitioner-appellant guilty of the crime of estafa punishable under Art. 315, Par 2(a) of the Revised Penal Code instead of violation of B.P. Blg. 22;
>
> II. Whether or not the Court of Appeals (erred) in not finding that the true nature of the Agreement between petitioner-appellant and the private complainant was that of a simple loan;
>
> III. Whether or not the Court of Appeals erred in giving credence to the private complainant's version of why the check issued by the petitioner-appellant was dated May 1995 instead of May 1996.

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[40] CA *rollo*, p. 127.

[41] *Rollo*, pp. 152-169, 170-191.

[42] *Id.* at 198-208.

[43] *Id.* at 210.

[44] *Id.* at 215-232, 239-260, 330-353.

We first rule on the issue of whether or not the contract between petitioner and private complainant was one of loan. Private complainant maintains that what they entered into was an Investment Agreement, while petitioner claims that the contract between them was a contract of loan.

After going over the records and testimonies of the witnesses, we are convinced that the transaction that was entered into was an Investment Agreement and not a simple loan.

It is very clear from the document[45] signed by both petitioner and private complainant that private complainant shall invest ₱3,500,000.00 in the development of parcel of land (owned by petitioner and located at Agusan, Cagayan de Oro City covered by Transfer Certificate of Title No. 61746) into a low-cost housing subdivision to be undertaken by petitioner. It is apparent from the face of the document that the land to be developed is located in Agusan, Cagayan de Oro.

Petitioner tries to alter or contradict their agreement by claiming that their true intention was to have a simple loan agreement. He alleged that before signing the document, he even told private complainant: "*Pare utang lang ito,* I issued a check, *bakit kailangan pa natin itong* investment agreement."[46] Private complainant then replied that the document was just a formality.

We do not give credence to petitioner's allegations. He is thus denying entering into an investment agreement. His denial will not prevail over the clear and unequivocal provisions of the investment contract. As testified to by private complainant, it was petitioner who had proposed the investment agreement and the document contained the latter's suggestions. Because they have reduced their agreement into writing, whatever previous or contemporaneous agreements they had, whether verbal or in writing, are merged in said written agreement.

Petitioner argues that the appellate court erred in convicting him of estafa, punishable under Article 315, par. 2(a), instead

[45] Exh. "A".

[46] TSN, 27 March 2003, p. 16.

of violation of Batas Pambansa Blg. 22.[47] He claims that only the fourth element of the crime charged – damage – may have been established.

Estafa, under Article 315, par. 2, of the Revised Penal Code, is committed by any person who defrauds another by using a fictitious name; or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[48] Under this class of estafa, the element of deceit is indispensable.[49]

The elements of Estafa by means of deceit as defined under Article 315(2)(a) of the Revised Penal Code are as follows: (1) there must be false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he must have been induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) as a result thereof, the offended party suffered damage.[50]

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another; or by which another is unduly and unconscientiously taken advantage of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth; and includes all

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[47] Bouncing Checks Law.

[48] *R.R. Paredes v. Calilung*, G.R. No. 156055, 5 March 2007, 517 SCRA 369, 393.

[49] *People v. Billaber*, 465 Phil. 726, 744 (2004).

[50] *Cosme, Jr. v. People*, G.R. No. 149753, 27 November 2006, 508 SCRA 190, 203-204.

forms of surprise, trick, cunning, dissembling and any other unfair way by which another is cheated. Deceit is a species of fraud.[51] And deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations; or by concealment of that which should have been disclosed, which deceives or is intended to deceive another so that he shall act upon it, to his legal injury. The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money.[52] In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision.[53]

The prosecution has established the presence of all the elements of the offense. Petitioner falsely represented to private complainant that he had an on going low-cost housing project in Agusan, Cagayan de Oro. Relying on petitioner's fraudulent misrepresentations, private complainant invested ₱3,500,000.00 in said project. Said amount was given by means of a check and handed over to petitioner simultaneously with the signing of the Investment Agreement. As it turned out, per certification from the HLURB, petitioner did not have any low-cost housing project in Agusan, Cagayan de Oro. Private complainant indeed suffered damage. He did not get his return of investment because the check he received from petitioner in the amount of ₱4,500,000.00 was dishonored. Moreover, petitioner neither paid private complainant the 6% compounded interest on said amount or balance thereon, nor did he allow private complainant to acquire a portion or portions of the low-cost housing subdivision in lieu of the payment of any unpaid amount or balance. To

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[51] *Sim, Jr. v. Court of Appeals*, G.R. No. 159280, 18 May 2004, 428 SCRA 459, 468.

[52] *Alcantara v. Court of Appeals*, 462 Phil. 72, 89 (2003).

[53] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, 16 December 2005, 478 SCRA 387, 411-412.

date, the amount private complainant invested in said low-cost housing has not been returned. Without a doubt, petitioner is guilty of estafa.

Petitioner contends he was denied due process of law when he was convicted of estafa instead of violation of Batas Pambansa Blg. 22. An examination of the private complainant's demand letter, he said, indicates that the demand was for alleged violation of Batas Pambansa Blg. 22.

We find his contention untenable.

Under Section 5, Rule 110 of the Revised Rules of Criminal Procedure, criminal actions shall be prosecuted under the direction and control of the prosecutor. In the case before us, the prosecutor, after going over the complaint found probable cause to charge him with estafa. This was the prosecutor's prerogative, considering that he was the one who would prosecute the case. The prosecuting attorney cannot be compelled to file a particular criminal information.[54] The fact that the demand letter may suggest a violation of Batas Pambansa Blg. 22 cannot control his action as to what charge he will file, if he sees evidence showing probable cause to charge an accused for another crime. It is the prosecutor's assessment of the evidence before him which will prevail, and not what is contained in a demand letter.

Moreover, there can be no denial of due process because petitioner was informed of the nature and cause of the accusation against him when he was arraigned. He was charged with estafa, and he pleaded not guilty thereto. He was given the opportunity to disprove the evidence against him. The fact that he was arraigned and was tried according to the rules of court undeniably shows he was accorded due process.

Petitioner asserts that the Investment Agreement upon which his conviction seemed to have been anchored should not have been considered because said document is a contract of adhesion.

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[54] *People v. Pineda*, 127 Phil. 150, 156-157 (1967).

Such assertion will not exonerate him.

A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto.[55] A contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid per se; they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[56]

In the case at bar, we find the Investment Agreement entered into by petitioner and private complainant valid. Although the Investment Agreement was prepared by private complainant's lawyer, this circumstance will not invalidate it. The document was prepared with the suggestions of petitioner being considered. We find it far-fetched to presume that petitioner did not know anything about the preparation of said document considering that the details contained therein are informations known only to the owner of the property to be developed. Furthermore, as a businessman who is engaged in real estate development, we have no doubt that he knew what he was doing when he signed the Investment Agreement.

Petitioner argues that his Metrobank check was dated May 1995 instead of 1996, because the same was not issued in relation to the Investment Agreement.

His argument does not persuade. It is clear from the document itself that the check was issued in consideration of the investment made by private complainant. Section 3 of said document provides:

Section 3. For and in consideration of the investment referred to in Section 2, the FIRST PARTY shall pay the amount of Four Million

[55] *Ermitaño v. Court of Appeals*, 365 Phil. 671, 678-679 (1999).

[56] *Rizal Commercial Banking Corporation v. Court of Appeals*, 364 Phil. 947, 953-954 (1999).

Five Hundred Thousand Pesos (₱4,500,000.00), Philippine Currency to the SECOND PARTY payable after six (6) months from the execution of this Investment Agreement. For this purpose, the FIRST PARTY shall issue post-dated check no. CD00371579951 drawn on Metrobank, Cagayan de Oro Branch in favor of the SECOND PARTY.[57]

Moreover, we agree with the trial court's reasoning why petitioner's check was dated 30 May 1995, to wit:

> It could not have been the intention of the parties in the Investment Agreement (Exh. "A") that the repayment of the investment, which was made on October 30, 1995 and payable with **interest after six (6) months** from date of execution of the Agreement as stipulated in the agreement be done by way of a check drawn five (5) months earlier. Obviously, the intention is to postdate the check. This circumstance should not adversely affect the cause of action of complainant because as regard the complainant, the check he received from the accused in exchange [for] the check he gave the latter, is due six months from the signing of the Investment Agreement.[58]

Finally, petitioner claims private complainant committed a violation of the provisions of the Anti-Usury Law.

We do not agree. First, petitioner failed to specify which provision of said law was violated by private complainant. Second, the effectivity of the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982 effective 1 January 1983.[59]

We now go to the penalty.

The trial court sentenced petitioner to suffer the indeterminate penalty "of ten (10) years of *prision mayor*, as minimum, to twenty (20) years as *prision* (sic) *temporal*, as maximum."[60] It also ordered petitioner to pay the private complainant the amount of ₱4,500,000.00 plus twelve percent (12%) interest per annum from 30 May 1996 until fully paid, and to pay the costs of suit. The Court of Appeals affirmed the conviction

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[57] Records, p. 218.

[58] *Id.* at 357.

[59] *Ruiz v. Court of Appeals*, 449 Phil. 419, 434 (2003).

[60] CA *rollo*, p. 75.

but modified the penalty imposed, more particularly the minimum of the indeterminate sentence, which was reduced to two (2) years and four (4) months of *prision correccional*.

The penalty for estafa by means of deceit is provided in Article 315 of the Revised Penal Code:

> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, 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 twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Under this paragraph, the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period is the imposable penalty if the amount defrauded is over ₱12,000.00 but not over ₱22,000.00. If the amount defrauded exceeds ₱22,000.00, the penalty provided shall be imposed in its maximum period, with one year added for each additional ₱10,000.00. The total penalty, however, shall not exceed twenty years.

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which in view of the attending circumstances, could be properly imposed" under the Revised Penal Code and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense.

The range of the penalty provided for in Article 315 is composed of only two periods, thus, to get the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three. Article 65 of the same code requires the division of the time included in the prescribed penalty into three equal periods of time, forming one period for each of the three portions. The maximum, medium and minimum periods of the prescribed penalty are therefore:

Minimum period - 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

Medium period - 5 years, 5 months and 11 days to 6 years, 8 months and 20 days

Maximum period - 6 years, 8 months and 21 days to 8 years

The amount defrauded being in excess of ₱22,000.00, the penalty imposable should be the maximum period of six years, eight months, and twenty-one days to eight years of *prision mayor*. However, Art. 315 also provides that an additional one year shall be imposed for each additional ₱10,000.00. The penalty should be termed as *prision mayor* or *reclusion temporal*, as the case may be. Here, considering that the total amount of the fraud is ₱3,500,000.00, the corresponding penalty obviously reaches the twenty-year limit. Thus, the correct imposable maximum penalty is twenty years of *reclusion temporal*.

The minimum period of the indeterminate sentence, on the other hand, should be within the range of the penalty next lower than that prescribed by Article 315(2)(a), Revised Penal Code, for the crime committed. The penalty next lower than *prision correccional* maximum to *prision mayor* minimum is *prision correccional* minimum (six months and one day to two years and four months) to *prision correccional* medium (two years, four months and one day to four years and two months).

The Court of Appeals thus correctly reduced the minimum of the indeterminate penalty imposed on petitioner.

We agree with both lower courts that petitioner should be ordered to pay private complainant the amount of ₱4,500,000.00 as actual damages representing private complainant's investment and unrealized profit pursuant to the Investment Agreement. The 12 % interest per annum on said amount as imposed by the lower courts from 30 May 1996 should be reduced to 6% per annum in accordance with the Investment Agreement. After this decision has become final, the interest thereon shall be 12% per annum.

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR No. 28581 dated 2 March 2006 is *AFFIRMED* with the *MODIFICATION* that the interest on the amount of ₱4,500,000.00 shall be 6% per annum computed from 30 May 1996. Upon the finality of this decision, the interest on said amount shall be 12% per annum.

SO ORDERED.

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

Reyes, J., dissents on the penalty and adopts his stand in *People v. Temporada* pending *En Banc*.

EN BANC

[G.R. No. 175573. September 11, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **JOEL S. SAMANIEGO,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; COMPOSITION AND PURPOSE. — Section 27, Article II of the Constitution reads: The State shall

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[*] Justice Conchita Carpio Morales was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 3 September 2008.

[**] Per Special Order No. 517, dated 27 August 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justices Dante O. Tinga and Presbitero J. Velasco, Jr. to replace Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez, who are on official leave.

[1] The Former Seventh Division of the Court of Appeals was impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption. To implement this, the Constitution established the Office of the Ombudsman, composed of the Ombudsman, one overall deputy and at least one Deputy each for Luzon, Visayas and Mindanao. It was the intention of the Constitution to make the Ombudsman independent. The purpose of the Office of the Ombudsman is enunciated in Section 12, Article XI of the Constitution: The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. The Office of the Ombudsman is a unique position in the 1987 Constitution. The Ombudsman and his deputies function essentially as a complaints and action bureau. Congress enacted Republic Act (R.A.) 6770 providing broad powers, as well as a functional and structural organization, to the Office of the Ombudsman to enable it to perform its constitutionally-mandated functions.

2. ID.; ID.; ID.; MANDATE AND SCOPE OF AUTHORITY. — R.A. 6770 states the mandate of the Ombudsman: SEC. 13. Mandate. – The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. To aid the Ombudsman in carrying out its tasks, it was vested with disciplinary authority over government officials. The scope of this authority was discussed in *Office of the Ombudsman v. CA*: [The Office of the Ombudsman] is vested with "full administrative disciplinary authority" including the power to "determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty." Thus, the provisions in [R.A.] 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman *full*

administrative disciplinary authority. **These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence and necessarily, impose the said penalty. x x x**

3. ID.; ID.; ID.; ID.; FULL DISCIPLINARY AUTHORITY AS ONE OF THE BROAD POWERS OF THE OMBUDSMAN; ELUCIDATED.— Full disciplinary authority is one of the broad powers granted to it by the Constitution and R.A. 6770. These broad powers, functions and duties are generally categorized into: investigatory power, prosecutory power, public assistance functions, authority to inquire and obtain information, and the function to adopt, institute and implement preventive measures. Actions of the Ombudsman that do not fall squarely under any of these general headings are not to be construed outright as illegal. The avowed purpose of preserving public trust and accountability must be considered. So long as the Ombudsman's actions are reasonably in line with its official functions and are not contrary to law and the Constitution, they should be upheld. Defending its decisions in the CA is one such power. The Ombudsman is expected to be an "activist watchman," not merely a passive onlooker. A statute granting powers to an agency created by the Constitution — such as R.A. 6770 — should be liberally construed to advance the objectives for which it was created. In *Buenaseda v. Flavier*, we held that any interpretation of R.A. 6770 that hampers the work of the Ombudsman should be avoided. Taking all this into consideration, the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. Its function is critical because public interest (in the accountability of public officers and employees) is at stake. We cannot limit the powers of the Ombudsman if its acts are not contrary to law or the Constitution.

4. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION AND LEGAL INTEREST OF THE INTERVENOR; ELUCIDATED.— Section 1, Rule 19 of the Rules of Court provides: Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the disposition of the court or of an officer thereof may, with leave of court be allowed to intervene in the action. x x x Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding. Its purpose is to settle in one action and by a single judgment the whole controversy (among) the persons involved. Intervention is not an absolute right as it can be secured only in accordance with the terms of the applicable statute or rule. In claiming the right to intervene, the intervenor must comply with the requirements laid down by Rule 19 of the Rules of Court which provides that the intervenor must have a legal interest in any of the following: (a) the matter in controversy; (b) the success of either of the parties; (c) against both parties or (d) be so situated as to be adversely affected by a distribution or other disposition of property in the disposition of the court or of an officer thereof. Intervention must not unduly delay or prejudice the adjudication of rights of the original parties. Moreover, it must be shown that the intervenor's rights may not be fully protected in a separate proceeding. The legal interest must be actual and material, direct and immediate. In *Magsaysay-Labrador v. CA*, the interest which entitles a person to intervene in a suit: [m]ust be on the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. The words "an interest in the subject" mean a direct interest in the cause of action as pleaded and which would put the intervenor in a legal position to litigate a fact alleged in the complaint, without the establishment of which plaintiff could not recover.

5. ID.; ID.; ID.; LEGAL INTEREST OF THE OFFICE OF THE OMBUDSMAN IN SUBJECT ADMINISTRATIVE DISCIPLINARY CASE, UPHELD. — The Office of the Ombudsman sufficiently alleged its legal interest in the subject

matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred: 2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision imposing upon petitioner the penalty of suspension for one (1) year, consistent with the doctrine laid down by the Supreme Court in ***PNB [vs]. Garcia,*** x x x and ***CSC [vs]. Dacoycoy,*** x x x In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability. Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority. It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court after a consideration of the appropriate circumstances. However, such discretion is not without limitations. One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution. The rule on intervention is a rule of procedure whose object is to make the powers of the court fully and completely available for justice, not to hinder or delay it. The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest. What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?

6. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE OF THE

OMBUDSMAN; FINALITY AND EXECUTION OF DECISION; THAT APPEAL SHALL NOT PREVENT THE SAME; RULE CLARIFIED IN *OFFICE OF THE OMBUDSMAN V. LAJA*; CASE AT BAR. — Section 7, Rule III of the Rules of Procedure of the Ombudsman, as amended provides: Section 7. Finality and execution of decision. — x x x where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals. x x x An appeal shall not stop the decision from being executory. x x x A literal reading of this rule shows that the mere filing of an appeal does not prevent the decision of the Ombudsman from becoming executory. However, we clarified this rule in *Office of the Ombudsman v. Laja*: [O]nly orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision.** It is only then that execution shall perforce issue as a matter of right. **The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal.** Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory. The penalty meted out to respondent was suspension for one year without pay. He filed an appeal of the Ombudsman's joint decision on time. In his appeal, he included a prayer for the issuance of a writ of preliminary injunction in order to stay the execution of the decision against him. Following *Office of the Ombudsman v. Laja*, we hold that the mere filing by respondent of an appeal sufficed to stay the execution of the joint decision against him. Respondent's prayer for the issuance of a writ of preliminary

injunction (for purposes of staying the execution of the decision against him) was therefore a superfluity. The execution of petitioner's joint decision against respondent should be stayed during the pendency of CA-G.R. SP No. 89999.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Efren L. Dizon for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the resolutions[2] of the Court of Appeals (CA) dated September 11, 2006 and November 21, 2006 in CA-G.R. SP No. 89999 captioned *Joel S. Samaniego v. Commission on Audit, Provincial Auditor's Office of Albay, Legaspi City, Albay*.

The facts follow.

Respondent Joel S. Samaniego was the City Treasurer of Ligao City, Albay. On separate dates, the Commission on Audit (COA) through its Regional Cluster Director Atty. Francisco R. Velasco[3] filed two administrative complaints against Samaniego, docketed as OMB-L-A-03-1060-K[4] and OMB-L-A-03-1061-K,[5] for dishonesty and grave misconduct.

In these administrative complaints, the COA alleged that respondent incurred shortages in his accountabilities for two

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[2] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. of the Former Twenty-Third Division of the Court of Appeals. *Rollo*, pp. 41-42 and 44.

[3] Regional Legal and Adjudication Office of the Commission on Audit.

[4] Filed on October 7, 2003.

[5] Filed on October 8, 2003.

separate periods.[6] Respondent received letters of demand requiring him to explain his side and settle his accountabilities.

In his counter-affidavit, respondent averred, among others, that OMB-L-A-03-1060-K was bereft of factual basis. He likewise averred that the alleged amount of his accountability in OMB-L-A-03-1061-K was the same amount cited in OMB-L-A-03-1060-K. He also pleaded the defense of restitution of his alleged accountabilities.

In a joint decision dated April 11, 2005, the Office of the Deputy Ombudsman for Luzon found respondent liable for grave misconduct[7] because he failed to explain his side and settle his accountabilities in OMB-L-A-03-1060-K. He was meted the penalty of one year suspension from office. In the same decision, however, OMB-L-A-03-1061-K was dismissed in view of respondent's restitution of his accountability.[8]

Via a petition for review on *certiorari* under Rule 43 with a motion for the issuance of a writ of preliminary injunction in the CA, respondent assailed the April 11, 2005 joint decision of the Office of the Ombudsman insofar as it found him liable in OMB-L-A-03-1060-K. This petition was captioned *Joel Samaniego versus Commission on Audit, Provincial Auditor's Office, Legaspi City, Albay* and docketed as CA – G.R. SP No. 89999. His prayer for the issuance of a writ of preliminary injunction was granted.

Since it was not impleaded as a respondent in CA- G.R. SP No. 89999, the Office of the Ombudsman filed a motion for intervention and to admit the attached motion to recall the writ of preliminary injunction. The motions were denied.

The Office of the Ombudsman now claims that the CA erred in denying its right to intervene, considering that its joint decision

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[6] OMB-L-A-03-1060-K was for the period of November 28, 2001 to June 19, 2002. OMB-L-A-03-1061-K was for the period of June 19, 2002 to October 7, 2002.

[7] Joint Decision dated April 11, 2005. *Rollo*, p. 223.

[8] *Rollo*, p. 222.

was the subject of the appeal. It also asserts that the writ of preliminary injunction should be recalled.

We rule for the Office of the Ombudsman.[9]

MANDATE OF THE OFFICE OF THE OMBUDSMAN

Section 27, Article II of the Constitution reads:

> The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

To implement this, the Constitution established the Office of the Ombudsman, composed of the Ombudsman, one overall deputy and at least one Deputy each for Luzon, Visayas and Mindanao.[10] It was the intention of the Constitution to make the Ombudsman independent.

The purpose of the Office of the Ombudsman is enunciated in Section 12, Article XI of the Constitution:

> The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

The Office of the Ombudsman is a unique position in the 1987 Constitution.[11] The Ombudsman and his deputies function

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[9] As will be discussed later, the Office of the Ombudsman had the right to intervene in CA-G.R. SP No. 89999 and we fully agree with its position on this matter. With regard to the recall of the writ of preliminary injunction, the Office of the Ombudsman claims that respondent was not entitled to the injunctive writ as his appeal did not stay the execution of the decision of the Ombudsman. While we do not agree with the reasoning of the Office of the Ombudsman on this issue, we lift the writ of preliminary injunction nonetheless following our ruling in *Ombudsman v. Laja* (G.R. No. 169241, 2 May 2006, 488 SCRA 574).

[10] Coquia, Jorge A., *ANNOTATION ON THE EXCESSIVE POWERS OF THE PHILIPPINE OMBUDSMAN*, 288 SCRA 676, 682.

[11] *Ledesma v. CA*, G.R. No. 161629, 29 July 2005, 465 SCRA 437, 446.

essentially as a complaints and action bureau.[12] Congress enacted Republic Act (RA) 6770[13] providing broad powers,[14] as well as a functional and structural organization, to the Office of the Ombudsman to enable it to perform its constitutionally-mandated functions.

RA 6770 states the mandate of the Ombudsman:

> SEC. 13. Mandate. – The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

To aid the Ombudsman in carrying out its tasks, it was vested with disciplinary authority over government officials.[15] The scope of this authority was discussed in *Office of the Ombudsman v. CA*:[16]

> [The Office of the Ombudsman] is vested with "full administrative disciplinary authority" including the power to "determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty." Thus, the provisions in [RA] 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman

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[12] Bernas, Joaquin J., S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1996 Edition, Rex Book Store, Inc., p. 999.

[13] Ombudsman Act of 1989.

[14] *Estarija v. Ranada*, G.R. No. 159314, 26 June 2006, 492 SCRA 652.

[15] Section 21. Officials Subject to Disciplinary Authority; Exceptions. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government owned and controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

[16] G.R. No. 167844, 22 November 2006, 507 SCRA 593, 608-611.

full administrative disciplinary authority. **These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence and necessarily, impose the said penalty**.xxx (emphasis supplied)

Full disciplinary authority is one of the broad powers granted to it by the Constitution and RA 6770. These broad powers, functions and duties are generally categorized into: investigatory power, prosecutory power, public assistance functions, authority to inquire and obtain information, and the function to adopt, institute and implement preventive measures.[17]

Actions of the Ombudsman that do not fall squarely under any of these general headings are not to be construed outright as illegal. The avowed purpose of preserving public trust and accountability must be considered. So long as the Ombudsman's actions are reasonably in line with its official functions and are not contrary to law and the Constitution, they should be upheld. Defending its decisions in the CA is one such power.

The Ombudsman is expected to be an "activist watchman," not merely a passive onlooker.[18] A statute granting powers to an agency created by the Constitution — such as RA 6770 — should be liberally construed to advance the objectives for which it was created.[19] In *Buenaseda v. Flavier*,[20] we held that any

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[17] *Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v.Vasquez*, 310 Phil. 549, 572.

[18] *Office of the Ombudsman v. Lucero*, G.R. No. 168718, 24 November 2006, 508 SCRA 107, 115 citing *Office of the Ombudsman v. CA*, G.R. No. 160675, 16 June 2006, 491 SCRA 92.

[19] *Buenaseda v. Flavier*, G.R. No. 106719, 21 September 1993, 226 SCRA 645, 653, citing *Department of Public Utilities v. Arkansas Louisiana Gas. Co.*, 200 Ark. 983, 142 SW (2d) 213 [1940]; *Wallace v. Feehan*, 206 Ind. 522, 190 N.E. 438 [1934]).

[20] G.R. No. 106719, 21 September 1993, 226 SCRA 645, 653.

interpretation of RA 6770 that hampers the work of the Ombudsman should be avoided.

Taking all this into consideration, the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them.[21] Its function is critical because public interest (in the accountability of public officers and employees) is at stake.

The Ombudsman concept originated in Sweden and other Scandinavian countries.[22] Its original and classic notion was that of an independent and politically neutral office which merely received and processed the people's complaints against corrupt and abusive government personnel.[23] The Philippine Ombudsman deviated from the classic model. It retained the characteristic independence and political neutrality but the range of its functions and powers was enlarged.

Given the foregoing premises, we cannot limit the powers of the Ombudsman if its acts are not contrary to law or the Constitution.

INTERVENTION BY THE OMBUDSMAN IN CASES IN WHICH ITS DECISION IS ASSAILED

Section 1, Rule 19 of the Rules of Court provides:

> Section 1. Who may intervene. – A person who has a legal interest in the matter in litigation, or in the success of either parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the disposition of the court or of an officer thereof may, with leave of court be allowed to intervene in the action. xxx

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[21] *Almonte v. Vasquez,* 314 Phil. 150, 179 (1995).

[22] Coquia, Jorge A., *ANNOTATION ON THE EXCESSIVE POWERS OF THE PHILIPPINE OMBUDSMAN*, 288 SCRA 676, 679-680, 683.

[23] *Office of the Ombudsman v. CA,* G.R. No. 167844, 22 November 2006, 507 SCRA 593, 611.

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding.[24] Its purpose is to settle in one action and by a single judgment the whole controversy (among) the persons involved.[25]

Intervention is not an absolute right[26] as it can be secured only in accordance with the terms of the applicable statute or rule. In claiming the right to intervene, the intervenor must comply with the requirements laid down by Rule 19 of the Rules of Court which provides that the intervenor must have a legal interest in any of the following:

(a) the matter in controversy;

(b) the success of either of the parties;

(c) against both parties or

(d) be so situated as to be adversely affected by a distribution or other disposition of property in the disposition of the court or of an officer thereof.[27]

Intervention must not unduly delay or prejudice the adjudication of rights of the original parties.[28] Moreover, it must be shown that the intervenor's rights may not be fully protected in a separate proceeding.[29]

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[24] *Manalo v. CA*, G.R. No. 141297, 8 October 2001, 419 SCRA 215, 233.

[25] *First Philippine Holdings Corporation v. Sandiganbayan*, G.R. No. 88345, 1 February 1996, 253 SCRA 30, 38.

[26] *Big Country Ranch Corp. v. CA*, G.R. No. 102927, 12 October 1993, 227 SCRA 161, 165.

[27] Feria, Jose Y., Justice (Ret.) and Noche, Maria Concepcion S., *CIVIL PROCEDURE ANNOTATED* Vol. 1, 2001 Edition, Central Lawbook Publishing Co., Inc., p. 480.

[28] *Id.*

[29] *Id.*

The legal interest must be actual and material, direct and immediate.[30] In *Magsaysay-Labrador v. CA*,[31] the interest which entitles a person to intervene in a suit:

> [m]ust be on the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. The words "an interest in the subject" mean a direct interest in the cause of action as pleaded and which would put the intervenor in a legal position to litigate a fact alleged in the complaint, without the establishment of which plaintiff could not recover.

The CA denied petitioner's motion for intervention for lack of basis, reasoning that:

> In the instant case, the Ombudsman's intervention is not proper considering that, other than its objection to the issuance of the injunctive writ, no legal interest in the matter subject of litigation has been alleged by the Ombudsman in the motion for intervention. xxx

We disagree.

The Office of the Ombudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:

> 2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision imposing upon petitioner the penalty of suspension for one (1) year, consistent with the doctrine laid down by the Supreme Court in ***PNB [vs]. Garcia***, xxx and ***CSC [vs]. Dacoycoy***, xxx; (citations omitted; emphasis in the original)

In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest

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[30] *Batama Farmers' Cooperative Marketing Association, Inc., et. al. v. Hon. Rosal, et. al.*,149 Phil. 514, 519 (1971).

[31] *Magsaysay-Labrador v. CA*, G.R. No. 58168, 19 December 1989, 180 SCRA 266, 271.

in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials.[32] To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.[33]

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct,[34] an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service.[35] It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service[36] that petitioner had to be given the opportunity to act fully within the parameters of its authority.

It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court[37] after a consideration of the appropriate circumstances.[38] However, such discretion is not without

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[32] *Rollo*, p. 23.

[33] *Id.*, p. 24.

[34] Grave misconduct is characterized by the existence of the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others. *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007, 521 SCRA 449. *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578.

[35] Grave misconduct is punishable by dismissal even for the first offense. Civil Service Commission Memorandum Circular No. 19 (series of 1999), Section 52 (A)(2).

[36] *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans and Presidential Commission on Good Government v. Ombudsman Desierto*, G.R. No. 138142, 19 September 2007, 533 SCRA 571.

[37] *Big Country Ranch Corp. v. CA*, *Supra* note 26.

[38] *Mago v. CA*, 363 Phil. 225, 233 (1999).

limitations.[39] One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution. The CA should have considered the nature of the Ombudsman's powers as provided in the Constitution and RA 6770.

Moreover, the rule on intervention is a rule of procedure whose object is to make the powers of the court fully and completely available for justice, not to hinder or delay it.[40]

Both the CA[41] and respondent likened the Office of the Ombudsman to a judge whose decision was in question.[42] This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest. What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?

PROPRIETY AND NECESSITY OF INJUNCTION IN APPEALS OF THE DECISIONS OF THE OMBUDSMAN

The CA anchored its denial of the motion to recall the writ of preliminary injunction on its lack of authority over the case. (The Office of the Ombudsman's motion for intervention was allegedly improper). But the Office of the Ombudsman could properly intervene in the appeal filed by respondent and therefore,

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[39] *Batama Farmers'Cooperative Marketing Association, Inc., et. al. v. Hon. Rosal, et. al., Supra* note 30.

[40] *Office of the Ombudsman v. Masing*, G.R. Nos. 165416, 165584 and 165731, 22 January 2008.

[41] "While we are of the view that there is nothing under Section 6, Rule 43 of the 1997 Rules of Procedure which prevents the courts or agencies in which decisions are the subject of the appeal from impleading themselves, at their own volition, in the action xxx." *Rollo*, p. 41-42.

[42] Paragraph 11, Comment of respondent Joel S. Samaniego. *Rollo*, p. 298.

the CA could determine whether a recall of the injunctive writ was proper.

In the interest of justice and practicality, we will rule on the propriety of the issuance of the injunctive writ.

The applicable provision of law is Section 7, Rule III of the Rules of Procedure of the Ombudsman, as amended:[43]

> Section 7. Finality and execution of decision. – xxx where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals xxx.
>
> An appeal shall not stop the decision from being executory. xxx.

A literal reading of this rule shows that the mere filing of an appeal does not prevent the decision of the Ombudsman from becoming executory. However, we clarified this rule in *Office of the Ombudsman v. Laja*:[44]

> [O]nly orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision.** It is only then that execution shall perforce issue as a matter of right. **The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal.** Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory. (emphasis in the original).

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[43] Administrative Order No. 7 (series of 1990), as amended.

[44] *Supra* note 9, citing *Lopez v. CA*, 438 Phil. 351 (2002).

The penalty meted out to respondent was suspension for one year without pay. He filed an appeal of the Ombudsman's joint decision on time. In his appeal, he included a prayer for the issuance of a writ of preliminary injunction in order to stay the execution of the decision against him. Following *Office of the Ombudsman v. Laja*, we hold that the mere filing by respondent of an appeal sufficed to stay the execution of the joint decision against him. Respondent's prayer for the issuance of a writ of preliminary injunction (for purposes of staying the execution of the decision against him) was therefore a superfluity. The execution of petitioner's joint decision against respondent should be stayed during the pendency of CA-G.R. SP No. 89999.

WHEREFORE, the petition is hereby *GRANTED*. The resolutions of the Court of Appeals dated September 11, 2006 and November 21, 2006 are hereby *REVERSED and SET ASIDE*. Accordingly, the Court of Appeals is ordered to allow the intervention of the Office of the Ombudsman in CA-G.R. SP No. 89999. The writ of preliminary injunction is hereby *LIFTED* as the execution of the decision in OMB-L-A-03-1060-K was (and still is) stayed by the filing and pendency of CA-G.R. SP No. 89999.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

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

SECOND DIVISION

[G.R. No. 176159. September 11, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEE RODRIGO, JOHN DOE @ BUNSO, and PETER DOE @ LYN-LYN,** *accused.*

LEE RODRIGO, *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; WHERE THE SAME IS OVERCOME BY SUFFICIENT EVIDENCE, BURDEN OF PROOF SHIFTS TO THE DEFENSE. — While an accused stands before the court burdened by a previous preliminary investigation finding that there is *probable cause* to believe that he committed the crime charged, *the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces.* This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the *burden of evidence* then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; REVIEW OF CASE OPENS THE WHOLE CASE FOR CONSIDERATION. — The review of a case opens the whole case for our consideration, including the questions not raised by the parties. Our role in the justice system is not so much to penalize as to see that justice is done. Towards this end, ours is the obligation to explore all aspects of a case, including those that the parties have glossed over or have not fully explored. The Court, in discharging its mandated duty, is tasked to consider two crucial points in sustaining a judgment of conviction: ***first,*** the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and ***second,*** all the elements constituting the crime were duly proven by the prosecution to be present. Failing in either of these, a judgment for acquittal is in order.

3. REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF ACCUSED; GREAT CARE TO BE TAKEN WHERE DECISION TOTALLY DEPENDS ON THE RELIABILITY OF IDENTIFICATION MADE BY SOLE WITNESS, AND THE ISSUE GOES BEYOND PURE CREDIBILITY INTO CONSTITUTIONAL DIMENSIONS ARISING FROM RIGHT TO DUE PROCESS OF ACCUSED; CASE AT BAR.— The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused. In the present case, the records show that Rodrigo's arrest and eventual conviction were wholly based on the testimony of Rosita who testified as an eyewitness and who identified Rodrigo as one of the perpetrators of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the widow of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Rosita made. The defense, for its part, grasped the possible flaw in the prosecution's case, but did not fully pursue its case and its

arguments on the basis of the existing jurisprudence on the matter. The aspect of this case that remains unexplored, despite the availability of supporting evidence, is Rosita's *out-of-court* identification of Rodrigo, done for the first time through a lone photograph shown to her at the police station, and subsequently, by personal confrontation at the same police station at an undisclosed time (presumably, soon after Rodrigo's arrest). Jurisprudence has acknowledged that *out-of-court* identification of an accused through photographs or mug shots is one of the established procedures in pinning down criminals. Other procedures for *out-of-court* identifications may be conducted through *show-ups* where the suspect alone is brought face to face with the witness (a procedure that appears to have been done in the present case as admitted by Rosita and noted in the decision), or through *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. The initial photographic identification in this case carries serious constitutional law implications in terms of *the possible violation of the due process rights of the accused* as it may deny him his *rights to a fair trial* to the extent that his *in-court* identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.

4. ID.; ID.; PHOTOGRAPHIC IDENTIFICATION; THE DANGERS IT SPAWNS; ELUCIDATED.— In *People v. Pineda*, we had occasion to explain photographic identification and the dangers it spawns: an impermissible suggestion and the risk that the eyewitness would identify the person he or she saw in the photograph and not the person she saw actually committing the crime, thus: . . . [W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness' recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who

is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified." x x x A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph. We confirmed the existence of this danger in *People v. Teehankee* where the Court tackled the reliability of *out-of-court* identifications as an issue; we recognized that the harmful effects on the rights of the accused of these types of identification can go as far as and contaminate *in-court* identification. Speaking through Mr. Justice (now Chief Justice) Reynato Puno, the Court said: It is understandable for appellant to assail his *out-of-court identification* by the prosecution witnesses in his first assignment of error. Eyewitness identification carries vital evidence and, in most cases, decisive of the success or failure of the prosecution. Yet, while eyewitness identification is significant, it is not as accurate and authoritative as the scientific forms of identification evidence such as the fingerprint or DNA testing. Some authors even describe eyewitness evidence as "inherently suspect". The causes of misidentification are known, thus: x x x Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. *Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited to normal human fallibilities and suggestive influences.*

5. ID.; ID.; ID.; PROPER PROCEDURE THEREON AND GUIDELINES TO DETERMINE WHETHER FLAWED PROCEDURE LED TO UNRELIABLE IN-COURT IDENTIFICATION. — In *People v. Pineda*, we also laid down the proper procedure on photographic identification, namely: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no

way suggest which one of the pictures pertains to the suspect. *In these cases, we emphasized that photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.* **That a single photograph, not a series, was shown to Rosita is admitted by Rosita herself in her testimony.** The prosecution's evidence themselves, both documentary and testimonial, show that the police investigatory procedure violated the jurisprudential rule we cited. To reasonably determine whether this flawed procedure indeed led to an unreliable in-court identification, we again hark back to *Teehankee* for the very useful guidelines it provided: In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

6. ID.; ID.; CREDIBILITY OF WITNESSES; PRESUMED CREDIBILITY OF THIRD PARTY WITNESS WHO HAS NO ILL MOTIVE TO FALSELY TESTIFY, NOT APPLICABLE TO WIDOW AS WITNESS TO HER KILLED HUSBAND. — Arguably, a widow who testifies about the killing of her husband has no motive other than to see that justice is done so that her testimony should be considered totally credible. This assumption, however, is not the same as the conclusion that a witness is credible because the defense has not shown any ill motive that would motivate him or her to falsely testify. Strictly speaking, this conclusion should apply only to third parties who are detached from and who have no personal interest in the incident that gave rise to the trial. Because of their presumed detachment, the testimonies of these detached parties can be presumed credible unless impugned by the adverse party through a showing of an ill or ulterior motive on the part of the witnesses. The presumed detachment that applies to third parties obviously cannot apply to a widow whose husband has been killed, or for that matter, to a relative whose kin is the victim, when the testimony of the widow or the relative is offered in the trial of the killer. The widow or the relatives are not

detached or disinterested witnesses; they are parties who suffered and experienced pain as a result of the killing. In fact, they are better characterized as *aggrieved parties* as even the law recognizes them as such through the grant of indemnities and damages. One reality about these aggrieved parties is that their reactions and responses to the crime vary. Indeed, for some of them, the interest of seeing that justice is done may be paramount so that they will act strictly according to legal parameters despite their loss and their grief. At the opposite extreme are those who may not so act; they may want to settle and avenge their loss irrespective of what the law and evidence may indicate. In between these extremes are those who may not be outwardly or consciously affected, but whose judgment with respect to the case and its detail may be impaired by their loss and grief. All these are realities that we must be sensitive to. Thus, the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation. It is in this light that we have examined Rosita's identification of Rodrigo, and we hold as unpersuasive the lower courts' conclusion that Rosita deserved belief because the defense had not adduced any evidence that she had motives to falsely testify. The better rule, to our mind, is that the testimony of Rosita, as an aggrieved party, must stand on its independent merits, not on any failure of the defense to adduce evidence of ill-motivation.

7. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSES BUT ONLY SO IN THE FACE OF AN EFFECTIVE IDENTIFICATION OF ACCUSED. — While the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification. Where, as in the present case, the identification has been fatally tainted by irregularity and attendant inconsistencies, doubt on the culpability of the accused, at the very least, has been established without need to avail of the defenses of denial and alibi. In constitutional law and criminal procedure terms, the prosecution never overcame the presumption of innocence that the accused enjoyed so that the burden of evidence never shifted to the defense. Thus, any

consideration of the merits of these defenses is rendered moot and will serve no useful purpose.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

Before us for review is the Decision[1] dated September 18, 2006 of the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 01531 which affirmed with modification[2] the decision dated June 27, 2005 of the Regional Trial Court (*RTC*), Branch 11, Malolos City, Bulacan in Crim. Case No. 917-M-2001.[3] The RTC's decision found the accused-appellant Lee Rodrigo (*Rodrigo*) guilty beyond reasonable doubt of the crime of robbery with homicide, and sentenced him as follows:

WHEREFORE, this Court finds the herein accused, Lee Rodrigo, GUILTY beyond reasonable doubt of Robbery with Homicide under Article 294, par. 1 of the Revised Penal Code and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the late Paquito Buna the following sums of money, to wit:

1. [₱50,000.00] as civil indemnity;
2. ₱50,000.00 as moral damages; and
3. ₱60,000.00 as actual damages.

x x x x x x x x x

SO ORDERED.

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[1] Penned by Associate Justice Remedios Salazar-Fernando (as Chairperson) with Associate Justice Noel G. Tijam and Associate Justice Arturo Tayag concurring; CA *rollo*, pp. 66-74.

[2] Reducing the award of civil indemnity to ₱50,000.00.

[3] Penned by Judge Basilio R. Gabo, Jr.; CA *rollo*, pp. 20-22.

The Antecedents

The basic facts of the robbery with homicide are not disputed. The spouses Paquito Buna and Rosita Cabrera-Buna[4] (*Rosita*) owned a restaurant located at Area H in San Rafael, Bulacan. The spouses were in their restaurant at around 10:20 a.m. on October 27, 2000 together with their two helpers; Paquito was cooking in the kitchen while Rosita and the helpers were attending to two customers. Three men, armed with guns, suddenly entered the restaurant, declared a holdup, and immediately proceeded to divest the two customers of their money and the restaurant of its earnings of ₱500.00. While the robbery was in progress, Paquito came out of the kitchen and, seeing what was happening, grabbed a "*bangko*"; he was instantly fired upon three times by one of the armed men while the other two turned their backs and laughed. After the robbers left, Rosita rushed Paquito to the hospital where he was pronounced dead on arrival.

Rosita afterwards filed a criminal complaint through her *Sinumpaang Salaysay* (dated November 24, 2000)[5] where she identified Rodrigo as among the men who robbed the restaurant and killed her husband. On February 28, 2001, Rodrigo and two men bearing the *aliases* of "*Lyn Lyn*"[6] and "*Bunso*" were formally charged of the special complex crime of robbery with homicide. The Information[7] reads:

That on or about the 27th day of October, 2000, in the Municipality of San Jose del Monte, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with short firearms, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, take, rob, and carry away with them ₱500.00 belonging to the spouses Paquito Buna and Rosita Cabrera-Buna, to the damage and prejudice of the said spouses in the amount of

[4] TSNs, April 10, 2002, May 22, 2002 and June 26, 2002.

[5] Prosecution's Exhibits "A" and "A-1"; Records, pp. 5-6.

[6] Also referred to as Lengleng in the records.

[7] *Records*, p. 2.

₱500.00; and on the occasion of the commission of the said robbery or by reason thereof, the herein accused, in furtherance of their conspiracy, did then and there willfully, unlawfully and feloniously, attack, assault and shoot with the short firearms Paquito Buna, thereby inflicting on him serious physical injuries which directly caused his death.

Contrary to law.

Rodrigo was arrested on May 29, 2001. The other two accused remain at large. Rodrigo pleaded not guilty upon arraignment and trial on the merits subsequently followed.

The prosecution introduced two witnesses – Rosita and Dr. Ivan Richard Viray, the medico-legal officer whose testimony was dispensed with by agreement of the parties.[8] Thus, Rosita stood as the prosecution's only witness on the identity of the accused and on the commission of the crime.

As an eyewitness, Rosita identified Rodrigo ***in court*** as one of the three armed men who robbed the restaurant and its customers.[9] She testified that she saw Rodrigo as one of the robbers who entered the restaurant; that one of the three immediately declared a holdup;[10] that Rodrigo had a firearm in his possession;[11] that he brandished his firearm and threatened the occupants of the restaurant in the course of the robbery;[12] and that Rodrigo left with the other robbers after achieving their evil purpose.[13]

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[8] TSN, October 16, 2002, pp. 3-4. The prosecution and the defense stipulated that Dr. Viray will testify on the following matters: (a) that he is a medico-legal officer at the PNP Crime Office in Malolos, Bulacan; (b) that he conducted an autopsy on the body of the victim Paquito Buna on October 27, 2000; and (c) that the cause of death of Paquito Buna in his Post-Mortem Certificate of Death is *intracranial hemorrhage* as a result of gunshot wound in the head.

[9] TSN, April 10, 2002, p. 5.

[10] TSN, June 26, 2002, p. 9.

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

[12] *Id.*, pp. 9-10.

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

On re-cross-examination, Rosita admitted that she ***initially*** identified Rodrigo by means of a photograph shown to her at the police station; the photograph was the only one shown to her at that time.[14]

After the presentation of the following documentary evidence: (a) *Sinumpaang Salaysay* dated November 24, 2000 of Rosita Buna (Exhibits "A" and "A-1");[15] (b) List of Expenses Incurred for the wake, funeral, and burial of Paquito Buna (Exhibit "B" with submarkings);[16] and (c) Certificate of Death of Paquito Buna (Exhibit "C"),[17] the prosecution rested its case.

The case for the defense relied solely on the testimony of Rodrigo who interposed the defenses of *denial* and *alibi*.[18] He claimed that he was at his house at FVR I, Norzagaray, Bulacan with his wife, cousin, and neighbor on the alleged date and time of the commission of the crime. He was at the time watching television while taking care of his child. On cross-examination, he admitted that the distance from Barangay San Rafael, Sapang Palay to his house was more or less one kilometer; the distance can be covered in 10 minutes through a single tricycle and jeepney ride. He also admitted that he came to know that he was being implicated in the case two days after the October 27, 2000 robbery-killing incident.[19]

The RTC convicted Rodrigo on June 27, 2005 of the crime of robbery with homicide on the basis of Rosita's testimony which the court found to be candid, straightforward, firm, and without any trace of any improper motive. This testimony, an eyewitness account, confirmed that Rosita saw Rodrigo as among the three robbers who robbed the restaurant and who fled after divesting the restaurant of its earnings and the customers of

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[14] *Id.*, p. 11.

[15] *Supra* note 5, p. 2.

[16] *Records*, pp. 88-91.

[17] *Id.*, p. 87.

[18] TSN, August 27, 2003.

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

their money, killing Paquito in the course of the robbery. The RTC declared that it was not important that Rodrigo did not actually shoot Paquito since there was a conspiracy; it did not matter who among the conspirators did the actual shooting as the act of one was the act of all, and all were equally liable. The court refused to believe Rodrigo's defenses of *denial* and *alibi* in the absence of any corroborating evidence and in light of Rosita's positive and categorical eyewitness identification and account of the crime.

The CA, to where Rodrigo appealed his conviction, affirmed the lower court's decision, with the modification that the award of civil indemnity should be reduced to ₱50,000.00. As the lower court did, the CA gave premium to Rosita's identification when it said: "*. . .Rodrigo was positively identified by Rosita Buna as one of the three (3) armed men who perpetrated the crime. She was straightforward in narrating how accused-appellant Rodrigo and his cohorts entered their restaurant, armed with guns and declared a hold-up. . .*" On the matter of identification, the appellate court significantly noted that: ***Rosita identified accused-appellant Rodrigo from the picture shown to her at the police station, and months later when she saw him in San Jose del Monte Police Station,*** *and that she pointed to accused-appellant Rodrigo inside the courtroom during the trial of the case as among those who robbed them in their restaurant.*[20]

Rodrigo elevated his conviction to this Court, citing the following reversible errors committed by the RTC and CA in their decisions:

(1) In convicting Rodrigo of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt; and

(2) In relying on the alleged weakness of the defense evidence rather than on the strength of the prosecution evidence.

Rodrigo particularly cited the inconsistencies in Rosita's testimony regarding his participation in the crime. In his view,

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[20] CA Decision, p. 6, CA *rollo*, p. 71.

these inconsistencies, together with his alibi, showed that he was not actually present at the crime scene. The identification Rosita made at "*the police station was not sufficient and convincing to lead one to believe that Lee Rodrigo was among the malefactors. The act of the wife (herein witness) is expected from someone who had just lost a loved one unexpectedly and in an unacceptable manner. Such form of identification clearly impaired her credibility as a witness.*"[21] Further, Rodrigo asserted:

> However, before the doctrine that positive identification prevails over denial or alibi may apply, it is necessary that the identification must first be shown to be positive and beyond question. Even though inherently weak, the defense of alibi or denial nonetheless acquires commensurate strength where no positive and proper identification has been made by the prosecution witness of the offender, as the prosecution still has the *onus probandi* in establishing the guilt of the accused. (*People v. Crispin*, 327 SCRA 167). While it is true that denial and alibi are weak defenses, it is equally settled that where the evidence of the prosecution is itself feeble, particularly as to the identity of the accused as the author of the crime, the defense of denial and alibi assume importance and acquire commensurate strength. (*People v. Giganto, Sr.* 336 SCRA 294).[22]

For its part, the People banked on the great weight accorded to the factual findings of the trial court, given its unique position of having observed the witnesses while testifying. It heavily relied, too, on Rosita's credibility and the positive identification she made as an eyewitness,[23] and the fact that she was not actuated by any improper motive.[24] Predictably, the People derided the alibi for being inherently weak and for failure to demonstrate that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[25]

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[21] Accused-appellant's Brief; CA *rollo*, p. 36.

[22] *Id.*, p. 37.

[23] Brief for the Appellee; *id.*, pp. 55-57.

[24] *Id.*

[25] *Id.*, p. 58.

Our Ruling

We find the petition impressed with merit and acquit Rodrigo of the crime charged.

Presumption of Innocence

While an accused stands before the court burdened by a previous preliminary investigation finding that there is *probable cause* to believe that he committed the crime charged, *the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces.* This principle, a right of the accused, is enshrined no less in our Constitution.[26] It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt.[27] Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the *burden of evidence* then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case.

Mode of Review

We mention, too, that the review of a case opens the whole case for our consideration, including the questions not raised

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[26] PHILIPPINE CONSTITUTION, Section 14, Article III.

[27] *Aguirre v. People*, G.R. No. 56013, October 30, 1987, 155 SCRA 337, 342.

by the parties.[28] Our role in the justice system is not so much to penalize as to see that justice is done. Towards this end, ours is the obligation to explore all aspects of a case, including those that the parties have glossed over or have not fully explored.

The Court, in discharging its mandated duty, is tasked to consider two crucial points in sustaining a judgment of conviction: ***first***, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and ***second***, all the elements constituting the crime were duly proven by the prosecution to be present. Failing in either of these, a judgment for acquittal is in order.

Identification of the Accused

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

In the present case, the records show that Rodrigo's arrest and eventual conviction were wholly based on the testimony of Rosita who testified as an eyewitness and who identified Rodrigo as one of the perpetrators of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the widow of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Rosita made. The defense, for its part, grasped the possible flaw in the prosecution's case, but did not fully pursue its case and its

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[28] *People v. Pineda*, G.R. No. 141644, May 17, 2004, 429 SCRA 478, 495.

arguments on the basis of the existing jurisprudence on the matter.

The aspect of this case that remains unexplored, despite the availability of supporting evidence, is Rosita's *out-of-court* identification of Rodrigo, done for the first time through a lone photograph shown to her at the police station, and subsequently, by personal confrontation at the same police station at an undisclosed time (presumably, soon after Rodrigo's arrest). Jurisprudence has acknowledged that *out-of-court* identification of an accused through photographs or mug shots is one of the established procedures in pinning down criminals.[29] Other procedures for *out-of-court* identifications may be conducted through *show-ups* where the suspect alone is brought face to face with the witness (a procedure that appears to have been done in the present case as admitted by Rosita[30] and noted in the decision [31]), or through *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose.[32]

The initial photographic identification in this case carries serious constitutional law implications in terms of *the possible violation of the due process rights of the accused* as it may deny him his *rights to a fair trial* to the extent that his *in-court* identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification

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[29] *People v. Villena*, G.R. No. 140066, October 14, 2002, 390 SCRA 637, 650.

[30] TSN, June 26, 2002, pp. 5-6, 8.

[31] *Supra* note 20.

[32] *People v. Teehankee*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

of the accused; evidence of identification is effectively created when none really exists.

In *People v. Pineda*, we had occasion to explain photographic identification and the dangers it spawns: an impermissible suggestion and the risk that the eyewitness would identify the person he or she saw in the photograph and not the person she saw actually committing the crime, thus:

> … [W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness' recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."
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> x x x x x x x x x
>
> A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.[33]

We confirmed the existence of this danger in *People v. Teehankee* where the Court tackled the reliability of *out-of-court* identifications as an issue; we recognized that the harmful effects on the rights of the accused of these types of identification can go as far as and contaminate *in-court* identification.[34] Speaking through Mr. Justice (now Chief Justice) Reynato Puno, the Court said:

> It is understandable for appellant to assail his *out-of-court identification* by the prosecution witnesses in his first assignment of error. Eyewitness identification carries vital evidence and, in most cases, decisive of the success or failure of the prosecution. Yet, while eyewitness identification is significant, it is not as accurate and

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[33] *Supra* note 28, p. 498.

[34] *Supra* note 32, p. 95.

authoritative as the scientific forms of identification evidence such as the fingerprint or DNA testing. Some authors even describe eyewitness evidence as "inherently suspect." The causes of misidentification are known, thus:

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> Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. *Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited to normal human fallibilities and suggestive influences.*[35] [Emphasis Supplied].

In *People v. Pineda*, we also laid down the proper procedure on photographic identification, namely: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.[36] *In these cases, we emphasized that photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.*[37]

That a single photograph, not a series, was shown to Rosita is admitted by Rosita herself in her testimony. The following exchanges transpired at her re-direct examination:

> Fiscal:
> (to the witness)
>
> Q Now, when you saw the accused Lee Rodrigo, how did you see Lee Rodrigo to [sic] the Police Station?

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[35] *Id.*, pp. 94-95.

[36] *Supra* note 28, pp. 497-498.

[37] *Id.*, p. 498; *People v. Villena*, *supra* note 29, p. 650; and *People v. Teehankee*, *supra* note 32, p. 95.

A His picture was shown to me and I told the police that he is the one, sir.

Q This Lee Rodrigo, the accused in this case?

A Yes, sir.[38]

reinforced by the following on re-cross-examination:

Atty. Roque:

Q You said, Madam witness, that you knew the accused through picture shown to you, am I correct?

A Yes, sir.

Q **Who showed you the picture?**

A Police Morado, sir.

Q How many pictures were shown to you?

A Just one only, sir.

Q Only the accused in this case, Lee Rodrigo?

A Yes, sir.[39] **(Emphasis supplied)**

This testimonial admission has its roots in Rosita's *Sinumpaang Salaysay* ("*Salaysay,*" Exhs. "A" and "A-1")[40] that gave the following details of this same out-of-court identification as follows:

12. T-: *Sino ba ang sinasabi mong pumasok sa loob ng iyong Restaurant na armado ng mga baril at nangholdap una sa Bombay at bumaril dito sa iyong asawa at pagkatapos kinuha pa and benta ng iyong Restaurant?*

S: *Ito sina LEE RODRIGO, Alyas BUNSO at isang Alyas LYN LYN po.*

13. T-: *Kilala mo ba itong nasabing mga suspects na armado ng baril at pumatay sa iyong asawa matapos mangholdap?*

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[38] TSN, June 26, 2002, p. 8.

[39] *Id.*, p. 11.

[40] *Supra* note 5.

S-: ***Hindi ko sila kilala*** *pero sinabi sa akin ni Chito Alicante na driver ng nagdedeliver ng Coca Cola na ang mga pangalan ay Alyas Bunso at Alyas LYNLYN at ang isa dito si LEE RODRIGO* ***dito ko nalang (sic) nalaman ang tunay na pangalan sa himpilan ng pulisya ng ipakita sa akin and kanyang retrato na siya ang nakita kung unang bumaril sa aking asawa at kumuha ng pera na kita ng aming Restaurant.*** [emphasis supplied].

Thus, the prosecution's evidence themselves, both documentary and testimonial, show that the police investigatory procedure violated the jurisprudential rule we cited above. To reasonably determine whether this flawed procedure indeed led to an unreliable in-court identification, we again hark back to *Teehankee* for the very useful guidelines it provided:[41]

In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted *the totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

Another well-known authority on eyewitness identification, Patrick M. Wall, made a list of 12 danger signals that exist independently of the identification procedures investigators use.[42]

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[41] Citing: *Neil v. Biggers*, 409 US 188 [1973]; *Manson v. Brathwaite*, 432 US 98 [1977]; Del Carmen, *Criminal Procedure, Law and Practice*, 3rd Edition, p. 346.

[42] *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASE* (1965), pp. 90-130, where the author pointed out 12 danger signals that exist independently of the identification procedures investigators use. These are:

"(1) the witness originally stated that he could not identify anyone;

(2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

These signals give warning that the identification may be erroneous even though the method used is proper.[43] Outside of the six factors mentioned in *Teehankee*, two danger signals in Wall's list are relevant in the case before us, namely: (1) the limited opportunity on the part of the witness to see the accused *before* the commission of the crime; and (2) the fact that several persons committed the crime. We shall consider them all in passing upon the reliability of Rosita's *in-court* identification in the discussions below.

1. **Rosita did not know the robbers.** A critical point in the totality of Rosita's testimony, admitted as early as her November 24, 2001 *Sinumpaang Salaysay*, is that she did not know the robbers. In other words, she saw them for the first time during the robbery. This fact can make a lot of difference as human experience tells us: in the recognition of faces, the mind is more certain when the faces relate to those already in the mind's memory bank; conversely, it is not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.

2. **Lack of any prior description.** Other than giving Rodrigo's name in her *Sinumpaang Salaysay* and confirming that – *dito ko nalang* [sic] *nalaman ang tunay na pangalan*

(4) before identifying the accused at the trial, the witness erroneously identified some other person;

(5) other witnesses to the crime fail to identify the accused;

(6) before trial, the witness sees the accused but fails to identify him;

(7) **before the commission of the crime, the witness had limited opportunity to see the accused;**

(8) the witness and the person identified are of different racial groups;

(9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

(12) the witness fails to make a positive trial identification." Cited in *People v. Pineda*, *supra* note 28, pp. 503-504.

[43] *Id.*, p. 503.

sa himpilan ng pulisya ng ipakita sa akin ang kanyang retrato na siya and nakita kung [sic] *unang Bumaril sa aking asawa at kumuha ng pera na kita ng aming Restaurant* – Rosita provided **no other description** of Rodrigo or of the other two, whether in her *Sinumpaang Salaysay* or in court. The original records of the case in fact contain no record of statements secured from witnesses immediately after the crime was committed on October 27, 2000. Thus, there is no basis to compare Rosita's or any other witnesses' immediate recollection of what transpired at the crime scene and the description of the perpetrators, with Rosita's photographic identification and her in-court identification at the trial. This is a glaring gap in the police investigation and one that leaves Rosita's identification unsupported, given the absence of corroborative evidence from other witnesses.

3. **Opportunity to view the criminals and degree of focus at the time.** Rosita's first encounter with the robbers – people she did not know before – happened **very briefly** during a **very horrifying experience** when her husband was shot and killed. Whether the event and its details etched themselves in Rosita's memory or whether everything happened in a blur is hard to say with definite certainty and should be gauged through Rosita's consistency in testifying on other aspects of the case.

4. **Number of criminals involved; degree of focus on the criminals.** With **three robbers involved**,[44] Rosita's focus and attention could not have been total on any one robber alone. In fact, if one robber should have caught her attention at all, he would have been the one who shot her husband and who, by her own testimony, was not Rodrigo whom she variously claimed to be outside the restaurant at that time or robbing her Indian customer.[45]

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[44] Other records from the original file of the case suggest that there may have been others who did not enter the restaurant, but this has not been introduced in any of the materials adduced in court; *records*, p. 8.

[45] TSN, April 10, 2002, p. 6; and TSN, June 26, 2002, p. 6.

5. **Time element attendant to identification.** The time element involved in the process of identification is shown by the sequence of events following the robbery-homicide on October 27, 2000. The earliest document on record subsequent to the crime is Rosita's *Sinumpaang Salaysay* of November 24, 2000 where Rosita significantly mentioned that she did not know the robbers and that one Chito Alicante gave her their names. The Information against Rodrigo was filed with the court on February 28, 2001[46] and the warrant of arrest was issued only on April 18, 2001.[47] The records do not show when Rosita saw Rodrigo at the San Jose del Monte Police Station[48] (as the CA decision noted) but this presumably happened only after his arrest on April 18, 2001 or 5 ½ months after the crime. Thereafter, Rosita identified Rodrigo in court on April 10, 2002, or more than 15 months after the crime. Thus, Rosita only saw Rodrigo twice before they met in court; **first**, at the crime scene as she alleged; and, **second**, at the San Jose del Monte Police Station under circumstances that do not appear in the records.

6. **Suggestiveness of the photographic identification.** As we have already noted, at no point did Rosita describe the robbers so that a take-off point for comparison can be made. Rosita simply made her photographic identification of Rodrigo as follows:

21. T-: *Mayroon akong ipapakita dito sa iyong isang retrato, ano ang masasabi mo dito?*

S-: *Iyan po ang tumutok sa Bombay pagkatapos kinuha ang pera at ina [sic] bumaril dito sa aking asawa.*

(Investigator showing to the complaining witness of picture of suspect LEE RODRIGO). [emphasis supplied]

Significantly, this identification came a month after the crime – a long month when the police appeared to have achieved no

[46] Records, p. 2.

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

[48] TSN, June 26, 2002, pp. 5-6.

headway in their investigation (although Rodrigo himself admitted that he heard from a policeman-neighbor that he was "implicated" in the crime two days after its commission[49]). By her own account, Rosita only learned the names of the robbers from information given by one Chito Alicante who never appeared as a witness in the case.[50] The photographic identification was made at the police station by showing her the lone photograph of Rodrigo **who was expressly noted in the *Sinumpaang Salaysay* as a "suspect."** Thus, Rosita, who did not know the robbers, initially fixed them in her mind through their names that Chito Alicante supplied, and subsequently, linked the name Lee Rodrigo to the faces she saw in the photograph the police presented as the suspect. Note that by providing only a lone photograph, complete with a name identified as the suspect, the police did not even give Rosita the option to identify Rodrigo from among several photographed suspects; the police simply confronted her with the photograph of Rodrigo as ***the*** suspect.

7. **Rosita's consistency** regarding Rodrigo's precise role in the robbery leaves much to be desired.[51] It is a matter of record that she testified that Rodrigo entered the restaurant along with his two cohorts,[52] but she subsequently declared that Rodrigo was outside the restaurant brandishing his firearm.[53] She also declared on cross-examination that Rodrigo was one of those who robbed the Indian,[54] but on re-direct, he declared that he did not touch the Indian nor take his valuables; he just stood there.[55] It is noteworthy that while Rosita appeared clear, categorical, and definite about the participations of Lyn-lyn and Bunso in the robbery, she failed to do the same with respect to Rodrigo's role in the crime. An aspect that never saw light

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[49] TSN, August 27, 2003, p. 4.

[50] TSN, April 10, 2002, p. 5.

[51] TSN, June 26, 2002, p. 9; and TSN, April 10, 2002, p. 6.

[52] TSN, June 26, 2002, p. 9.

[53] TSN, April 10, 2002, p. 6.

[54] TSN, June 26, 2002, p. 6.

[55] *Id.*, p. 9.

during the trial was the statement in the *Sinumpaang Salaysay* that there were other participants in the crime, albeit hearsay, who served as lookouts, namely, Ricky de la Cruz, Mateo Malson *alias* "Mike," and Carding Oronos. No explanation can be gleaned from the evidence on what happened to these identified possible accomplices. The *Salaysay* also mentions the people with Rosita in the restaurant, namely, the helpers and the customers. None of these eyewitnesses was ever called upon to testify. While these discrepancies and gaps may appear to be trivial in considering the elements of the crime, they assume significant materiality in considering the weakness of Rodrigo's identification as one of the robbers.

Separately from these considerations, we entertain serious doubts about the validity of the reasoning, made by both the trial and the appellate courts, that a widow's testimony – particularly, her identification of the accused – should be accepted and held as credible simply because the defense failed to show by evidence that she had reasons to falsify.[56]

Arguably, a widow who testifies about the killing of her husband has no motive other than to see that justice is done so that her testimony should be considered totally credible. This assumption, however, is not the same as the conclusion that a witness is credible because the defense has not shown any ill motive that would motivate him or her to falsely testify. Strictly speaking, this conclusion should apply only to third parties who are detached from and who have no personal interest in the incident that gave rise to the trial. Because of their presumed detachment, the testimonies of these detached parties can be presumed credible unless impugned by the adverse party through a showing of an ill or ulterior motive on the part of the witnesses.

The presumed detachment that applies to third parties obviously cannot apply to a widow whose husband has been killed, or for that matter, to a relative whose kin is the victim, when the testimony of the widow or the relative is offered in

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[56] RTC Decision, p. 2; CA *Rollo*, p. 21. CA Decision, pp. 6, 8; CA *Rollo*, pp. 71, 73.

the trial of the killer. The widow or the relatives are not detached or disinterested witnesses; they are parties who suffered and experienced pain as a result of the killing. In fact, they are better characterized as *aggrieved parties* as even the law recognizes them as such through the grant of indemnities and damages. One reality about these aggrieved parties is that their reactions and responses to the crime vary. Indeed, for some of them, the interest of seeing that justice is done may be paramount so that they will act strictly according to legal parameters despite their loss and their grief. At the opposite extreme are those who may not so act; they may want to settle and avenge their loss irrespective of what the law and evidence may indicate. In between these extremes are those who may not be outwardly or consciously affected, but whose judgment with respect to the case and its detail may be impaired by their loss and grief. All these are realities that we must be sensitive to.

Thus, the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation. It is in this light that we have examined Rosita's identification of Rodrigo, and we hold as unpersuasive the lower courts' conclusion that Rosita deserved belief because the defense had not adduced any evidence that she had motives to falsely testify. The better rule, to our mind, is that the testimony of Rosita, as an aggrieved party, must stand on its independent merits, not on any failure of the defense to adduce evidence of ill-motivation.

Conclusion

We hold it highly likely, based on the above considerations, that Rosita's photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo as one of the three robbers. We rule too that based on the other indicators of unreliability we discussed above,

Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime.

A first significant point to us is that Rosita did not identify a person whom she had known or seen in the past. The robbers were total strangers whom she saw very briefly. It is unfortunate that there is no direct evidence of how long the actual robbery and the accompanying homicide lasted. But the crime, as described, could not have taken long, certainly not more than a quarter of an hour at its longest. This time element alone raises the question of whether Rosita had sufficiently focused on Rodrigo to remember him, and whether there could have been a reliable independent recall of Rodrigo's identity.

We also find it significant that three robbers were involved, all three brandishing guns, who immediately announced a holdup. This is an unusual event that ordinarily would have left a person in the scene nervous, confused, or in common parlance, "rattled." To this already uncommon event was added the shooting of Rosita's husband who charged the robbers with a *"bangko"* and was promptly shot, not once but three times. These factors add up to our conclusion of the unlikelihood of an independent and reliable identification.

We have to factor in, too, into this conclusion, the matter of Rosita's motivation as well as her frame of mind when she identified Rodrigo from a photograph. We take judicial notice that subsequent to the crime was the victim's burial,[57] again an uncommon event attended by an acute sense of loss, grief and, at the very least, disruption of and some measure of confusion in the bereaved family's daily life. Uncertainties and a good measure of anxiety must have been present, too, because of the lack of any immediate significant developments in the investigation of the case in its first month, *i.e.*, between the time of the crime and Rosita's *Sinumpaang Salaysay* and photographic identification. We note that the original records

[57] In this regard, see the evidence of expenses attendant to the burial.

of the case do not even indicate the initial investigatory steps the police undertook, especially in terms of securing the statements of the immediate witnesses and the description of the criminals. Under these facts, it is more likely than not that when the police called on Rosita to ask for the identification of the lone suspect *they had already identified*, Rosita was prepared in her mind to believe the police, to confirm the results of their investigation, and to identify the suspect as one of the perpetrators. That Rodrigo was *presented and identified as a suspect* is unmistakably indicated in Rosita's *Sinumpaang Salaysay;*[58] that Rosita responded to the not-too-subtle suggestion of the police that Rodrigo was one of the robbers is very likely. We note in this regard that Rosita does not appear to have properly sorted out in her mind the details of what transpired on October 27, 2000 as demonstrated by the inconsistencies in her narration of the details of the crime, notably between her *Sinumpaang Salaysay* and her in-court testimony, as well as in the details of her in-court testimony as her narration and credibility were tested at the various stages of examination. To be sure, she correctly testified on the elements of the crime of robbery with homicide and confirmed that it was committed. Not at the same level of certainty, however, are the respective roles of the three perpetrators and their identities as the latter appear to be based more on relayed third-party information and on police conclusions rather than on Rosita's own personal recollection of events. At this level of certainty, we would be violating the rights of the accused to be presumed innocent and to due process if we affirm the lower courts' decisions. Hence, Rodrigo's acquittal on ground of reasonable doubt is in order.

Epilogue: The Defenses of Denial and Alibi

While the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification. Where, as in the present case, the identification has been fatally tainted by irregularity and attendant inconsistencies, doubt on the culpability of the accused, at the very least,

[58] Records, p. 5.

has been established without need to avail of the defenses of denial and alibi. In constitutional law and criminal procedure terms, the prosecution never overcame the presumption of innocence that the accused enjoyed so that the burden of evidence never shifted to the defense. Thus, any consideration of the merits of these defenses is rendered moot and will serve no useful purpose.

WHEREFORE, premises considered, we *REVERSE* and *SET ASIDE* the Decision dated September 18, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01531. Accused-appellant LEE RODRIGO is hereby *ACQUITTED on the ground of reasonable doubt* of the crime of robbery with homicide. We hereby *ORDER HIS IMMEDIATE RELEASE* unless there are other valid causes for his continued detention.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for his immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180500. September 11, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MEDARDO CRESPO *y* CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; POWER TO GRANT LEAVE TO FILE THE SAME IS DISCRETIONARY TO THE TRIAL COURT; DENIAL THEREOF IN CASE AT BAR, PROPER. — The **power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings**. Unless there is grave abuse thereof amounting to lack or excess of jurisdiction, which is not present in the instant case, the trial court's denial of prior leave to file demurrer to evidence may not be disturbed. Moreover, this Court is in full conformity with the appellate court that concomitant with the right of the accused to a speedy trial is the right of the victim to obtain justice without delay. "To allow and grant every motion for extension of time would unduly delay the process of administering and dispensing justice".

2. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES. — A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape. Thus, in the disposition and review of rape cases, the Court is guided by these principles: *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution. Each and every instance of rape is a separate and distinct crime and each should be proven beyond reasonable doubt.

3. ID.; ID.; NOT NEGATED BY MINOR INCONSISTENCIES; EXACT DATES AND TIMES OF RAPE COMMITTED FROM

1987 TO 1994 ARE MINOR DETAILS TO DECLARATIONS CONSISTENT ON MATERIAL AND IMPORTANT POINTS. — While AAA can no longer remember the exact date and time of the commission of all the offenses, it is worth noting that AAA was just 10 ten years old when the appellant started raping her. She had been continuously ravished by her father since she was 10 years old until she reached the age of 17. It cannot be expected that AAA would remember the exact dates and times of all the rapes committed against her by the appellant. Under the circumstances of the case at bar, the Court cannot impose the burden of exactness, detailedness and flawlessness on the victim's recollections of her harrowing experiences. It is all the more understandable that she may have been confused as to the exact details of each and every rape incident, considering that she had been sexually ravished from 1987 to 1994. It is in fact expected that she would rather wish to purposely forget the abhorrent memories of every single occasion. Very definitely, an errorless testimony cannot be expected, especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage. Besides, this Court has already ruled that discrepancy between the witnesses' testimonies in court and the affidavits they had her previously signed, as to minor details regarding the commission of the crime, do not constitute sufficient ground to impeach the credibility of said witnesses, where on material and important points their declarations are consistent.

4. ID.; ID.; NOT NEGATED BY THE ALLEGED TYPICAL BEHAVIOR OF RAPE VICTIM. — No standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them. Some may shout, some may faint, while others may be shocked into insensibility. Emphasis must also be given to the fact that AAA was only 10 years old when her father started raping her, and this continued until she was 17 years old; thus, she was still a minor. She cannot therefore be expected to react as an adult and realize the repercussions of the wrong committed upon her by the man she considered as her father. This Court indeed has not laid down any rule on how a rape victim should behave

immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.

5. **ID.; ID.; CRYING OF THE VICTIM DURING TESTIMONY IS EVIDENCE OF TRUTH OF THE RAPE CHARGES. —** During her testimony before the court *a quo*, AAA cried several times whenever she had to recall and narrate what happened to her. The **crying of a victim during her testimony is evidence of the truth of the rape charges**, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.

6. **ID.; ID.; NOT NEGATED BY DELAY IN REPORTING THE CRIME; DELAY JUSTIFIED IN CASE AT BAR. —** The defense makes a fuss about the delay in reporting the rape incidents, for it took AAA nine years before she revealed to her mother the incessant violations of her honor. This delay, however, can be justified by AAA's fear of her father and the threat that she would no longer see her mother and siblings, a threat that was made by the appellant every time she resisted his sexual advances. Even though her father was working abroad, her fear of him remained, as he returned to the country every year. She was also so ashamed of what had happened to her that she would just want to keep it to herself. She was unsure whether her mother would believe her if she told her the truth, because she knew how much her mother loved her father, and how much her mother wanted to keep their family together. Also, AAA must have been overwhelmed by fear and confusion and shock over the fact that her own father had defiled her. Indeed, studies show that victims of rape committed by their fathers take much longer in reporting the incidents to the authorities than do other victims. In this connection, it has been held that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained, as in the case at bar.

7. **ID.; ID.; ESTABLISHED WHEN VICTIM POSITIVELY IDENTIFIED ACCUSED. —** AAA positively identified the appellant as her ravisher. **The straightforward narration by AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case**

for the prosecution. No daughter will charge a father, especially a good father, with rape. The charge is not only embarrassing to the victim and the family, it means death to the head of the family. It bears stressing once again that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape, especially against her own father, unless she is motivated by a patent desire to seek justice for the wrong committed against her.

8. ID.; ID.; PENALTY; APPLICABLE RULE FOR RAPE COMMITTED IN 1987 TO 1993 IS ART. 335 OF THE REVISED PENAL CODE. — It should be emphasized that the crimes of rape were committed by the appellant in the years 1987 up to 1994. The **governing law then at the time of its commission was Article 335 of the Revised Penal Code**, which states that: Article 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present. The crime of rape shall be punished by *reclusion perpetua.* When the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua to death*. When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death. When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death. When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. Thus, from the afore-quoted provision of law, the proper penalty to be imposed upon the appellant is only *reclusion perpetua* and not death, for each count of rape. **Also, the circumstances of minority and relationship that would qualify the crime of rape and require the imposition of the death penalty was not**

yet included in the enumeration in Article 335. This is the reason why the instances of rape committed by the appellant against AAA from 1987 to 1993 cannot be regarded as qualified rape.

9. ID.; ID.; ID.; APPLICABLE RULE FOR RAPE COMMITTED IN 1994 IS RA 7659, WITH THE QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP CONSIDERED.— The circumstances of minority and relationship, which qualify the crime of rape and require the imposition of the death penalty, came about only when Republic Act No. 7659 took effect on 1 January 1994. Therefore, for the crime of rape committed by the appellant against AAA in January, 1994 (Criminal Case No. 0305-SPL), the applicable law is Article 335, as amended by Republic Act No. 7659. The minority of AAA was properly proven by the prosecution by presenting her Certificate of Live Birth showing that she was born on 1 December 1976; therefore, in January, 1994, she was only 17 years old, still a minor. The relationship between AAA and the appellant was also proven by AAA's Certificate of Live Birth. Moreover, it was admitted by the appellant that AAA is indeed, his eldest daughter. Having said that, this Court finds the appellant guilty beyond reasonable doubt of the crime of qualified rape for the rape committed in January, 1994 and imposes upon him the penalty of death. However, pursuant to Republic Act No. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the penalty to be meted out to the appellant shall be *reclusion perpetua.*

10. ID.; ID.; ID.; DAMAGES; PROPER DAMAGES FOR RAPE COMMITTED IN 1987 TO 1993 IN CASE AT BAR. — *As to damages*. This Court affirms the award of ₱50,000.00 as civil indemnity given by the lower courts to the victim for each count of rape committed in 1987 to 1993. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma, with mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility. Thus, this Court finds that the award of moral damages by both lower courts, in the amount

of ₱50,000.00 for each count of rape, was proper. As regards the award of exemplary damages for the crimes of rape committed in 1987 to 1993, Article 2230 of the New Civil Code provides: Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party. In this case, there being no aggravating circumstance that can be considered, because at the time of the commission of the crime, minority and relationship were not yet considered as aggravating circumstances, the award of exemplary damages by the lower courts will have to be deleted.

11. ID.; ID.; ID.; ID.; PROPER DAMAGES FOR QUALIFIED RAPE COMMITTED IN 1994 IN CASE AT BAR.— For the crime of qualified rape committed in January, 1994, the civil indemnity as well as the moral damages should be increased from ₱50,000.00 to ₱75,000.00, and the award for exemplary damages should be reduced from ₱30,000.00 to ₱25,000.00. The same is in accordance with this Court's ruling in *People v. Sambrano*, 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.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Salatandre & Associates Law Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 29 March 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00516, which affirmed with modification the Decision[2] dated 17 March 2001 of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, in Criminal Cases No. 0298-SPL to 0305-SPL, finding herein appellant Medardo Crespo *y* Cruz guilty beyond reasonable doubt of eight counts of rape committed against his own daughter AAA.[3] In lieu of the death penalty imposed for each count of rape, the appellant was sentenced to suffer the penalty of *reclusion perpetua* for each count pursuant to Republic Act No. 9346.

Appellant Medardo Crespo *y* Cruz was charged in eight separate Informations[4] with the crime of rape committed against

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal, concurring, *rollo*, pp. 3-28.

[2] Penned by Judge Stella Cabuco Andres, CA *rollo*, pp. 70-82.

[3] 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 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 "XXX" as in "No. XXX Street, XXX District, City of XXX."

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 R.A. No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of R.A. 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.

[4] CA *rollo*, pp. 14-30.

his own daughter AAA. The cases were archived due to non-apprehension of appellant. It appears, however, that the eight separate Informations failed to allege the father-daughter relationship between the appellant and the private complainant. The prosecution, thus, saw the need to amend the Informations. Hence, for the sole purpose of doing so, it filed before the court *a quo* a Motion to Revive[5] Cases to Admit Amended Informations.[6] In an Order[7] dated 25 February 1999, the court *a quo* granted the aforesaid Motion and admitted the Amended Informations.

Whereupon, on 11 February 1999, eight Amended[8] Informations charging the appellant with the crime of rape committed against his own daughter were filed before the court *a quo* under the same docket numbers. The Amended Information in Criminal Case No. 0298-SPL reads as follows:

Criminal Case No. 0298-SPL

That on or sometime in April or May 1987, in the Municipality of XXX, Province of XXX and within the jurisdiction of this Honorable Court, [appellant] Medardo Crespo, with lewd design and by means of force, threats, violence and intimidation, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge with his own daughter AAA, ten (10) years old, against her will and consent, to her damage and prejudice.[9]

The Amended Informations in Criminal Cases No. 0299-SPL to 0305-SPL contained similar averments except for the dates of the commission of the crime, to wit:

Criminal Case No. 0299-SPL – sometime in the year 1988

Criminal Case No. 0300-SPL – sometime in the year 1989

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[5] The prosecution moved to revive these cases, which have been ordered archived for non-apprehension of the appellant, for the sole purpose of admitting the Amended Informations.

[6] Records, p. 64.

[7] *Id.* at 81.

[8] CA *rollo,* pp. 31-46.

[9] *Id.* at 31.

Criminal Case No. 0301–SPL – sometime in the year 1990

Criminal Case No. 0302-SPL – sometime in the year 1991

Criminal Case No. 0303-SPL – sometime in the year 1992

Criminal Case No. 0304-SPL – sometime in the year 1993

Criminal Case No. 0305-SPL – sometime in the year 1994

On 25 May 1999, the appellant was arrested.[10] Upon arraignment, the appellant, assisted by counsel *de parte*, pleaded NOT GUILTY[11] to all the charges against him. During the pre-trial conference,[12] both the prosecution and the defense agreed that (1) the appellant is the father of the private complainant; and (2) the appellant was arrested pursuant to a warrant of arrest. Both of them likewise presented several documents for marking as Exhibits.[13] Thereafter, trial on the merits ensued.

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[10] As evidenced by the Report on the Service of Warrant of Arrest, records, p. 134.

[11] As evidenced by Certificates of Arraignment, *id.* at 248-255.

[12] As evidenced by a Pre-trial Order dated 4 November 1999, *id.* at 265-266.

[13] The prosecution presented the following documents for marking:

1. Medico-legal certificate issued by the NBI to the private complainant as Exhibit "A";

2. "*Sinumpaang Salaysay*" of AAA dated 27 May 1996 as Exhibit "B";

3. "*Sinumpaang Salaysay*" of CCC dated 28 May 1996 as Exhibit "C";

4. "*Sinumpaang Salayasay*" of BBB dated 28 May 1996 as Exhibit "D";

5. Letter dated 22 March 1997 as Exhibit "E".

The defense, on the other hand, presented the following documents for marking:

1. AAA's letter to the appellant dated 18 October 1994 as Exhibit "1";

2. *Id.*, dated 22 August 1995 as Exhibit "2";

3. *Id.*, dated 9 October 1995 as Exhibit "3";

4. *Id.*, dated 10 October 1995 as Exhibit "4";

5. *Id.*, dated 2 April 1996 as Exhibit "5";

6. *Id.*, dated 11 April 1996 as Exhibit "6";

7. Group of picture as the family picture as Exhibit "7".

The prosecution presented the following witnesses: AAA, the private complainant herself; Dr. Annabelle Soliman, a medico-legal officer of the National Bureau of Investigation (NBI), Taft Avenue, Manila; BBB, private complainant's mother; and CCC, private complainant's sister.

AAA was born on 1 December 1976, as evidenced by her Certificate of Live Birth.[14] At the time of her testimony, she was 23 years old and already married to DDD. She is the eldest daughter of the appellant and BBB.[15]

AAA testified that in 1987, she was only 10 years old and she was residing with her mother and siblings in a rented house in XXX Village, XXX, XXX. The appellant, her father, was then working in Saudi Arabia as an overseas contract worker (OCW, now Overseas Filipino Worker or OFW). Sometime in April or May, 1987, upon appellant's return from Saudi Arabia, AAA's ordeal began.

AAA narrated that in the month of April or May, 1987, the appellant started touching her breasts, nipples and private part. The said incident happened in the morning inside the master bedroom of the house they were renting. During those times, her mother, a school teacher, was in school, as it was enrolment day, while her siblings were outside their house. She did not tell her mother what the appellant did because she was afraid of him. She said her fear of the appellant came about when she was still young, as she often saw the appellant hurting her mother. The appellant's act of touching her breasts, nipples and private part was repeated for at least ten times. Thereafter, also during the month of April or May, 1987, the appellant went further by inserting his finger into her private part. This happened many times, also inside the master bedroom whenever her mother and siblings were not present.[16]

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[14] Records, p. 373.

[15] TSN, 15 December 1999, pp. 9, 12, 14.

[16] TSN, 15 December 1999, pp. 14-19.

AAA disclosed that sometime in the last week of May, 1987, when her mother and siblings were not around, the appellant called and told her that they would clean the house. When she approached the appellant, the latter pulled her inside the room and, once inside, pushed her to the bed. The appellant started to remove her panty. He also removed his pajama and underwear. Then, the appellant inserted his finger into her private part. She was then crying and pleading to the appellant, "*Huwag na po, tama na po*." Instead of listening to her plea, the appellant tried to insert his penis into her private part. She felt pain, as a part of the appellant's penis was inside her vagina. She cried, "*Huwag na po*." Then, the appellant put cream on her anus before inserting his private part therein. The appellant removed his penis from her anus before it emitted something.[17] Her mother came home in the afternoon. Again, she did not tell her mother what appellant did to her for fear of the appellant. The said acts were repeated many times, usually in the morning until the appellant's departure for abroad in January, 1988.[18]

From January, 1988 to February, 1989, AAA did not have the courage to tell her mother about her harrowing experiences in the hands of the appellant because she was afraid of the appellant, as the latter threatened that she would no longer see her mother and siblings once she revealed everything. The said threat was made to her every time she resisted his sexual advances.[19]

In February, 1989, when AAA was 12 years old, the appellant returned to the Philippines. He stayed in the country until September, 1989. During the period that he was in the country, he repeatedly raped AAA at different times. It happened sometimes in the evening but most of the time in the morning when her mother and siblings were not in their house. AAA recalled that during the aforesaid period, the appellant raped her by forcibly inserting his penis into her private part. Once at 1:00 a.m. when

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[17] TSN, 16 December 1999, pp. 6-8.

[18] TSN, 7 January 2000, pp. 3-4.

[19] *Id.* at 7.

AAA's mother and siblings were already sleeping, appellant woke her up, tapped her in the arm, pulled her and asked her to go to the living room where she was raped by the latter. The act of rape was repeated many times from the appellant's arrival in February, 1989 until his departure in September, 1989.[20]

The appellant came back to the country in September, 1990. She was 13 years old then. Prior to his arrival, AAA never had the courage to tell her mother that the appellant had been raping her several times whenever he was in the country because of the following reasons, to wit: (1) she was afraid of the appellant; (2) she was aware of how much her mother loved the appellant despite the fact that the latter hurts her mother; (3) she also saw the sacrifices of her mother and how much her mother wanted to keep their family intact; (4) she was ashamed of what happened to her. She did not know to whom to disclose her experiences. She was confused, and even doubted if her mother would believe her once she revealed her plight.[21]

The whole family was already staying in their new rented house at XXX, XXX, XXX. During the appellant's two-month stay in the Philippines, he again raped AAA. It happened every time AAA's mother was not around. The appellant would start molesting AAA by first asking her to enter their room. Once inside, the appellant forced her to lie down on the bed. The appellant would then remove her shorts and underwear. He also forced her to open her legs. Thereafter, the appellant would forcibly insert his penis into her private part and sometimes into her anus. After satisfying his bestial desire, the appellant would ask her to go to the comfort room to wash herself. These acts were repeated many times until the appellant's departure for abroad in November, 1990.[22]

Again, in December, 1991, the appellant came back to the Philippines. Upon his arrival, he and AAA's mother went to Baguio City for a week's vacation. However, upon the return

[20] *Id.* at 8-11.

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

[22] *Id.* at 13-17.

of the appellant and her mother from Baguio in January, 1992, the appellant raped her again by forcibly inserting his private part into hers. The said incident happened four to five times in the master bedroom whenever her mother and siblings were not in their house. The appellant left for abroad in January, 1992.[23]

In March, 1993, the appellant returned to the Philippines and stayed in the country until May, 1993. In less than a week after appellant's arrival, he repeatedly raped AAA in the master bedroom and sometimes in the children's room, usually in the morning by pulling her inside the room and asking her to lie down. The appellant then would remove her shorts and panty; force her to open her legs and insert his private part into her private part. There was also a time when AAA was taking a bath in their comfort room when the appellant forcibly opened its door. Once inside, appellant kissed her. The appellant sat down on the toilet bowl and forced her to sit on his lap. He then forcibly inserted his private part into hers. As he was having a hard time doing it, he asked AAA to face him on a kneeling position and forced her to swallow his private part. She resisted, but the appellant pushed her head down. She was continuously raped by the appellant until his departure in May, 1993.[24]

In December, 1993, the appellant came back again in the country and stayed until January, 1994. From December, 1993 to January, 1994, the appellant raped her for about six times. It happened sometimes in the morning and sometimes in the afternoon. AAA was already 17 years old by then. She recalled that in those times when she was raped by the appellant, the latter stayed on top of her for a while probably for five minutes. The appellant then left the country to work abroad in January, 1994.[25]

Then again, the appellant returned to the Philippines in March, 1995 and stayed in the country for 45 days. The family went

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[23] *Id.* at 19-21.

[24] *Id.* at 22-27.

[25] *Id.* at 28-30.

to Bicol for a vacation and stayed there for two to three weeks. The appellant left again for abroad in May, 1995.[26] In April, 1996, when AAA was already 19 years old, she sought her mother's permission to spend her vacation in her aunt's house in Cavite, because she knew that the appellant was expected to come home anytime in 1996. While spending her vacation in Cavite, she met someone who eventually became her boyfriend (now her husband). This enraged her mother. During the confrontation, asked if she had any problem, she started crying until she finally told her mother about the bestial deeds her father had been doing to her since she was 10 years old. Thereafter, AAA and her mother went to the National Bureau of Investigation (NBI) office in Manila to report the same. At the NBI, her statement was taken and she was also subjected to physical examination. Both were reduced into writing.[27]

The appellant did not come back to the country anymore upon learning that she filed a case against him in May, 1996. Instead, AAA received a letter [28] dated 22 March 1997 signed by the appellant asking for her forgiveness.

BBB, AAA's mother, declared, in addition to what had been testified to by her daughter-complainant, that the appellant is her husband as evidenced by their Marriage Contract. [29] She and the appellant begot four children. She affirmed that the private complainant is their eldest daughter. She testified that on 5 April 1995, she and the rest of her family were sleeping in a room inside a house in Guinobatan, Albay, where they were spending their vacation. At around 3:00 a.m. to 4:00 a.m., she saw the appellant lift the mosquito net of AAA, who at that time was fast asleep. She observed that before the appellant lifted the mosquito net, he looked at her trying to find out whether she was asleep. When the appellant thought that she was already asleep, he lifted the mosquito

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

[27] *Id.* at 32-35.

[28] Records, p. 211.

[29] *Id.* at 374.

net in the place where AAA was sleeping. She then slapped him but the latter just kept quiet.[30]

Dr. Annabelle Soliman, an NBI Medico-Legal Officer, was presented by the prosecution as a witness solely for the purpose of bringing before the court *a quo* Living Case Report No. MG-96-754.[31] The said Living Case Report was the medico-legal report of the physical examination of AAA which was prepared by Dr. Louella I. Nario. Dr. Nario was her senior officer at the NBI until the former's demise.[32] The said medico-legal report revealed that there was no evident sign of extragenital physical injuries noted on the body of AAA at the time of examination. But there was an old, deep healed hymenal laceration found therein.[33]

The last witness presented by the prosecution was CCC, the sister of AAA. CCC disclosed that in 1994, there were instances wherein she saw the appellant pull and drag AAA to a room inside their house. AAA resisted by saying, "*Ano ba*?" She also tried to release her arms from his grip, but the appellant successfully dragged her inside the room. When CCC saw that incident, she did not do anything. She thought that AAA was just tired of making an inventory of their cassette tapes because every time the appellant returned to the country, he would ask AAA to help him in making an inventory of all the cassette tapes he bought. She likewise divulged the fact that there were occasions when she heard the appellant lock the door of the room while AAA was inside. Also, she noticed that whenever the appellant dragged AAA inside the room, he would increase the volume of their stereo.[34]

After the prosecution had rested its case, appellant filed a Motion for Leave of Court to File Demurrer to Evidence[35] on

[30] TSN, 2 December 1999, p. 4.

[31] Records, p. 45.

[32] TSN, 15 December 1999, pp. 3-6.

[33] Records, p. 45.

[34] TSN, 21 February 2000, pp. 10-22.

[35] Records, pp. 408-410.

the ground of insufficiency of evidence of the prosecution; the motion was granted. Despite several extensions given, within which to file the aforesaid Demurrer to Evidence, appellant failed to submit one. He filed a last and final motion for extension to submit the demurrer to evidence, but the same was denied. The Motion for Reconsideration of the appellant was likewise denied.

The appellant then filed a Petition for *Certiorari* with Urgent Prayer for a Temporary Restraining Order and/or Preliminary Injunction[36] before the Court of Appeals. The appellate court issued a Resolution[37] dated 24 May 2000, dismissing[38] the Petition for *Certiorari* filed by the appellant. The appellant then filed an Amended Petition for *Certiorari*,[39] but it was likewise denied in a Resolution[40] of the appellate court dated 30 June 2000. On 11 June 2000,[41] the Resolution of the appellate court dated 24 May 2000, dismissing the Petition for *Certiorari* filed by the appellant, became final and executory.

Defense henceforth proceeded to present its evidence. It presented the testimonies of the following witnesses to refute the allegations of AAA: (1) the appellant; (2) Rene Collao,

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[36] Records, pp. 487-502.

[37] Penned by Associate Justice Ramon Mabutas, Jr., with Associate Justices Wenceslao I. Agnir, Jr. and Eriberto U. Rosario, Jr., concurring. Records, Volume II, p. 687.

[38] The Petition for *Certiorari* filed by the appellant before the Court of Appeals was dismissed for the following reasons: (1) for failure to personally sign the certification of non-forum shopping pursuant to Section 5, Rule 7 of the 1997 Revised Rules of Civil Procedure; (2) for failure to attach copies of all pleadings and other relevant documents; (3) for failure to state the specific material dates showing that the Petition was filed on time pursuant to Section 4, Rule 65 of the 1997 revised Rules of Civil Procedure; and (4) for failure to implead the People of the Philippines as party respondent, considering that the Petition emanated from a criminal case.

[39] Records, pp. 688-709.

[40] Penned by Associate Justice Angelina Sandoval-Gutierrez with Associate Justices Renato C. Dacudao and Mercedes Gozo-Dadole, concurring; records, p. 724.

[41] As evidenced by an Entry of Judgment; records, p. 817.

private complainant's alleged former boyfriend; (3) the brother of the appellant; and (4) his sister.

The appellant testified that he and BBB got married in February, 1976. They begot four children, and one of them was the private complainant, their eldest child. In 1983, he started to work abroad. He came back to the country yearly. While working abroad, he maintained his communication with his family through telephone calls and writing letters. He also gave them support by sending them money through banks. It was summer of 1987 when he came back to the country to spend time with his family. He stayed in the country for less than 10 months. He vehemently denied that he repeatedly raped AAA for at least three to four times a week during his stay in the country. He alleged that it was impossible for him to do that because he was very close to AAA, and he was always out of their house because he frequently went to the house of his mother in Cavite. He said that the possible reason for the said allegation was the frequency of the quarrels over financial matters between him and his wife. He similarly denied that he touched the breasts of AAA and inserted his finger into her anus after applying cream. He also denied having inserted his private part into hers.[42] He even said that he could not have had anal intercourse with AAA, as his private part was too big. If that indeed happened, AAA would have been hospitalized.[43]

After his stay in the Philippines for at least 10 months in 1987, he went abroad, this time in Libya. He returned to the country in 1988 and stayed here for at least three months. He denied having raped AAA during this period.[44] Also, the appellant denied having raped AAA in 1989, 1990, 1991, 1992, 1993 and 1994 because during those years he was working abroad. Further, he could not have done such acts against his own daughter, because his very purpose in working abroad was to give AAA as well as his other children a better future and not to ruin their lives. The appellant disclosed that whenever he came home

[42] TSN, 21 June 2000, pp. 2-12.

[43] TSN, 27 July 2000, p. 7.

[44] TSN, 21 June 2000, p. 12.

from abroad, his children, especially AAA, welcomed him at the airport with hugs and kisses. AAA would even tell him that she missed him. There was not even a single trace of anger on AAA's face whenever she met him at the airport.[45] The appellant also denied that AAA was afraid of him, as she often saw him hurting her mother. He averred that as much as possible, they hid their quarrels from their children. The appellant, however, admitted that there was one occasion wherein he hit his wife because he found out that she continued communicating with her cousin, a priest, with whom she had sexual relations. The appellant also denied that he threatened AAA that she would no longer see her mother and siblings if she reported to anybody what he did to her. He vowed that he did not know any reason why AAA would be afraid of him, and why she would accused him of such a grave offense.[46]

The appellant likewise denied the accusation of his wife that he lifted the mosquito net of AAA in the early morning of 5 April 1995 in Guinobatan, Albay, when they were having their family vacation. He even denied that on 22 May 1996, his wife confronted him over the telephone about the sexual abuse he had done to AAA, and that he apologized for doing such things to their daughter. He declared that their conversation on that occasion was only as regards the remittances he had been sending to his family, and he had also inquired as to the possible reason why his children were no longer writing him letters. Similarly, he denied that he was a jealous husband. He revealed before the court *a quo* that he and his wife were not in a good and smooth marital relationship, as his wife was always after the money. He even characterized his relationship with his wife as the worst. But, he admitted that despite such fact, still, he maintained his sexual relations with her and also frequently received letters from his wife every time he was abroad. They still called each other "Honey." They also posed together in picture takings, though he claimed that it was, "*pakitang tao na lang.*"[47]

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[45] TSN, 27 July 2000, pp. 11-25.

[46] TSN, 9 August 2000, pp. 11-13.

[47] *Id.* at 14-20.

The appellant admitted that on 22 March 1997, he wrote a letter to AAA, asking for her forgiveness for the *molestiya* he had done to her. He, however, explained that the term *molestiya* was just his common expression and had no malicious connotation. When he used the term *molestiya* in his letter to AAA, he was referring to his shortcomings, his badmouthing and cruelty to her, and his frequent absences at home.[48] In his own letter to his sister, the appellant said that he also used the word *molestiya*, as he had asked favor or financial help from her for his family. Even his sister and brother, who testified, were one in the view that the term *molestiya* meant asking too much favor. The said word, according to him, was taught to them by their parents in order for them to help each other, instead of asking favors from their neighbors and other people.[49]

He also could not fathom the motive of his daughter for filing these cases against him, as he had a very close relationship with her, being his favorite child. His relationship with his wife, though, was not pleasant. He believed that his wife's amorous relationship with her cousin priest was the motivating factor for these criminal cases against him as these would pave the way for his incarceration and for his wife to freely maintain her relationship with her lover priest.[50]

The former boyfriend of AAA was also presented by the defense. He alleged that he and AAA became sweethearts on 26 May 1992. In December, 1995, he brought her once in a motel, where they had sex; and they communicated through letters and cards.[51]

On 17 March 2001, the trial court rendered its Decision convicting the appellant of eight counts of rape and sentencing him to suffer the extreme penalty of death for each count. The court *a quo* also ordered the appellant to pay AAA ₱50,000.00

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[48] *Id.* at 22-25.

[49] TSN, 30 August 2000, pp. 2-3, 7; TSN, 11 January 2001, p. 4-5; TSN, 8 January 2001, pp. 4-5.

[50] TSN, 13 September 2000, p. 8.

[51] TSN, 25 September 2000, pp. 2-19.

as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of rape, and to pay the costs also for each count.

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[52] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, appellant assigns the following errors, *viz*:

I. Whether or not the trial Judge committed grave abuse of discretion amounting to lack or excess in jurisdiction for issuing [O]rders, dated [10, 17 March 2000] and [24 April 2000], respectively, unjustly, capriciously and whimsically.

II. Whether or not the Prosecution failed to prove beyond reasonable doubt the elements of the crimes charged.

III. Whether or not the trial court erred in the imposition of the penalty of death in all of the crimes charged.

IV. Whether or not the Hon. Trial Judge failed to hear the instant case with the required impartiality and diligence.[53]

The Court of Appeals rendered a Decision on 29 March 2007, affirming the Decision of the RTC, with the modification that in lieu of the death penalty imposed upon the appellant for each count of rape, the appellant was sentenced to suffer only the penalty of *reclusion perpetua* for each count pursuant to Republic Act No. 9346.

Hence, this appeal.

After a meticulous review of the records, this Court finds no reason to reverse the judgments of the trial court and the appellate court.

Appellant alleges that the court *a quo* committed grave abuse of discretion in issuing the Order dated 17 March 2000, which

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

[53] CA *rollo*, pp. 109-110.

denied his Urgent *Ex-Parte* Motion for Last and Final Extension of Time to File Demurrer to Evidence. The said Order, according to the appellant, was issued whimsically and capriciously for being based purely on the ground of the non-extendibility of the prior period granted to him in an Order dated 10 March 2000, within which to file his Demurrer to Evidence. This assertion of the appellant is specious.

As aptly found by the appellate court, the court *a quo* had already granted the appellant's Motion for Extension of Time to File Demurrer to Evidence twice. In fact, it had already given the appellant a total of 20 days within which to file his Demurrer to Evidence. It was only on the third Motion for Extension of Time to File Demurrer to Evidence that the trial court denied the same. Considering the several extensions prayed for by the appellant, this Court cannot fault the trial court for finally denying the Motion for Extension of Time to File Demurrer to Evidence filed by the appellant.

The **power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court**. The **purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings**. Unless there is grave abuse thereof amounting to lack or excess of jurisdiction, which is not present in the instant case, the trial court's denial of prior leave to file demurrer to evidence may not be disturbed.[54] Moreover, this Court is in full conformity with the appellate court that concomitant with the right of the accused to a speedy trial is the right of the victim to obtain justice without delay. "To allow and grant every motion for extension of time would unduly delay the process of administering and dispensing justice."[55]

The second assignment of error posited by the appellant was the failure of the prosecution to establish beyond reasonable doubt the elements of the crimes charged.

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[54] *Bernardo v. Court of Appeals*, G.R. No. 119010, 5 September 1997, 278 SCRA 782, 791-792.

[55] *Rollo*, p. 18.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[56] Thus, in the disposition and review of rape cases, the Court is guided by these principles: *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[57]

In this case, the appellant argues that each and every incident of rape is a separate and distinct crime, so each of them should be proven beyond reasonable doubt. He maintains that the prosecution failed to establish beyond reasonable doubt the existence of carnal knowledge as regards the rape incidents which happened from the year 1987 to 1994. He also points out that AAA's statements in open court were inconsistent with her statements in her *Sinumpaang Salaysay*.

Truly, each and every instance of rape is a separate and distinct crime, and each should be proven beyond reasonable doubt.[58] As can be gleaned from the records of this case, AAA clearly, candidly, straightforwardly and explicitly narrated before the trial court how the appellant took advantage of her in the years 1987, 1988, 1989, 1990, 1992, 1993 and 1994. From

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[56] *People v. Malones*, 469 Phil. 301, 318 (2004).

[57] *People v. Lou*, 464 Phil. 413, 421 (2004).

[58] *People v. De Leon*, 377 Phil. 776, 788 (1999).

1987 to 1994, with the exception of the year 1991 when AAA categorically said in her direct testimony that in 1991 nothing happened, AAA repeatedly pointed out the horrendous part of her ordeal when his father would insert his penis into her vagina/anus against her will, as well as the threat and intimidation that accompanied the sexual abuse.

While AAA can no longer remember the exact date and time of the commission of all the offenses, it is worth noting that AAA was just 10 ten years old when the appellant started raping her. She had been continuously ravished by her father since she was 10 years old until she reached the age of 17. It cannot be expected that AAA would remember the exact dates and times of all the rapes committed against her by the appellant. Under the circumstances of the case at bar, the Court cannot impose the burden of exactness, detailedness and flawlessness on the victim's recollections of her harrowing experiences. It is all the more understandable that she may have been confused as to the exact details of each and every rape incident, considering that she had been sexually ravished from 1987 to 1994. It is in fact expected that she would rather wish to purposely forget the abhorrent memories of every single occasion. Very definitely, an errorless testimony cannot be expected, especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage. Besides, this Court has already ruled that discrepancy between the witnesses' testimonies in court and the affidavits they had her previously signed, as to minor details regarding the commission of the crime, do not constitute sufficient ground to impeach the credibility of said witnesses, where on material and important points their declarations are consistent.[59]

Appellant pointedly argues that despite the number of times he had raped AAA, she still managed to regularly write him sweet, warm and affectionate letters without any trace of hatred, anger and condemnation; she still met, kissed and hugged him at the airport every time he arrived from abroad; she affordedly

[59] *People v. Villar*, 379 Phil. 417, 427-428 (2000).

smiled and posed joyfully and voluntarily with him in any picture-taking after the rape incidents. AAA's actuations were incongruent to those of a person who has been ravished by her own father, ravishment that could certainly have installed in her feelings of inferiority and hatred.

We are not persuaded to look otherwise. AAA's reaction can very well be explained by her desire to resume her normal life after her harrowing experiences in the hands of her own father. It bears stressing that nobody knew that her father was raping her, as she was ashamed to tell it to anybody. She was confused and had doubts whether her mother would believe her if she told her the truth, because she knew how much her mother loved her father, and how much she wanted to keep their family together. Thus, despite the pain caused by her father's acts of raping her, she just kept these to herself and pretended that nothing happened.

As this Court has repeatedly observed, no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them.[60] Some may shout, some may faint, while others may be shocked into insensibility.[61] Emphasis must also be given to the fact that AAA was only 10 years old when her father started raping her, and this continued until she was 17 years old; thus, she was still a minor. She cannot therefore be expected to react as an adult and realize the repercussions of the wrong committed upon her by the man she considered as her father.[62] This Court indeed has not lain down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.[63] In this case, as the

[60] *People v. Iluis*, 447 Phil. 517, 528 (2003).

[61] *People v. Suarez*, G.R. No. 153573-76, 15 April 2005, 456 SCRA 333, 346.

[62] *People v. Dulay*, 431 Phil. 49, 57 (2002).

[63] *People v. Aspuria*, 440 Phil. 41, 50-51 (2002).

appellate court has observed, "AAA opted to suffer her ordeal in silence, keep the tormenting experience to herself and make things just as normal as if nothing happened."[64]

During her testimony before the court *a quo*, AAA cried[65] several times whenever she had to recall and narrate what happened to her. The **crying of a victim during her testimony is evidence of the truth of the rape charges**, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.[66] The truthfulness of AAA's testimony was even bolstered by appellant's letter to her dated 22 March 1997. In the said letter, the appellant, with all his heart and soul, asked the forgiveness of AAA for the *molestiya* he had done to her since she was a child. The appellant tried to convince this Court that the word *molestiya* simply meant asking too much favor; that he used that word because of the badmouthing he did to AAA, *i.e.*, for telling her, "*Siguro anak ka ng pari kaya ganyan ang ugali mo, matigas ang ulo mo. Siguro hindi kita anak.*" It is highly unusual for the appellant to ask forgiveness with all his heart and soul and to admit that what he did was abominable or *kasuklamsuklam*, if only because of his badmouthing of AAA.

The defense makes a fuss about the delay in reporting the rape incidents, for it took AAA nine years before she revealed to her mother the incessant violations of her honor. This delay, however, can be justified by AAA's fear of her father and the threat that she would no longer see her mother and siblings, a threat that was made by the appellant every time she resisted his sexual advances. Even though her father was working abroad, her fear of him remained, as he returned to the country every year. She was also so ashamed of what had happened to her that she would just want to keep it to herself. She was unsure whether her mother would believe her if she told her the truth, because she knew how much her mother loved her father, and

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[64] *Rollo*, p. 21.

[65] TSN, 15 December 1999, p. 12; TSN, 16 December 1999, p. 8; TSN, 7 January 2000, p. 13; TSN, 14 January 2000, p. 14 and 35.

[66] *People v. Ancheta*, 464 Phil. 360, 371 (2004).

how much her mother wanted to keep their family together. Also, AAA must have been overwhelmed by fear and confusion and shock over the fact that her own father had defiled her. Indeed, studies show that victims of rape committed by their fathers take much longer in reporting the incidents to the authorities than do other victims.[67]

In this connection, it has been held that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained, as in the case at bar. In *People v. Coloma*[68] in which the complainant was only 13 years old when first molested by her father, the Court adverted to the father's moral and physical control over the young complainant in explaining the delay of eight years before the complaint against her father was made.

Finally, AAA positively identified[69] the appellant as her ravisher. **The straightforward narration by AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution**.[70] No daughter will charge a father, especially a good father, with rape. The charge is not only embarrassing to the victim and the family, it means death to the head of the family.[71]

It bears stressing once again that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape, especially against her own father, unless she

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[67] *People v. Bugarin*, 339 Phil. 570, 585-586 (1997).

[68] G.R. No. 95755, 18 May 1993, 222 SCRA 255.

[69] TSN, 15 December 1999, p. 12.

[70] *People v. Macapal, Jr.*, G.R. No. 155335, 14 July 2005, 463 SCRA 387, 400.

[71] *People v. Abellano*, 440 Phil. 228, 294-295 (2002).

is motivated by a patent desire to seek justice for the wrong committed against her.[72]

Having established the commission of the crime and the identity of the appellant, motive now becomes immaterial, rendering it unnecessary to discuss what motivated the complainant to file these cases.[73]

As to penalty. In this case, the trial court convicted the appellant of eight counts of rape qualified by minority and relationship and sentenced him to suffer the extreme penalty of death for each count. The appellate court affirmed the conviction, but sentenced the appellant to suffer the penalty of *reclusion perpetua* for each count pursuant to Republic Act No. 9346.

This Court does not agree that the appellant should be convicted of eight counts of rape. It is clear from the direct testimony of the private complainant that in the year 1991 (Criminal Case No. 0301–SPL) nothing happened, meaning she was not sexually abused by the appellant in that year. Thus, the appellant should be convicted only of seven counts of rape; that for the years 1987, 1988, 1989, 1990, 1992, 1993 and 1994.

The penalty of death imposed by the trial court was not proper. The penalty of *reclusion perpetua* for each count of rape imposed by the appellate court was proper. However, it is not correct to say that the same was pursuant to Republic Act No. 9346.

It should be emphasized that the crimes of rape were committed by the appellant in the years 1987 up to 1994. The **governing law then at the time of its commission was Article 335 of the Revised Penal Code**, which states that:

Article 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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[72] *People v. Bontuan*, 437 Phil. 233, 241 (2002).

[73] *People v. Opong,* G.R. No. 177822, 17 July 2008.

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

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

When the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion *perpetua to death*.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (*As amended by Rep. Act No. 2632, approved June 18, 1960, and Rep. Act No. 4111, approved June 20, 1964*.)

Thus, from the afore-quoted provision of law, the proper penalty to be imposed upon the appellant is only *reclusion perpetua* and not death, for each count of rape. **Also, the circumstances of minority and relationship that would qualify the crime of rape and require the imposition of the death penalty was not yet included in the enumeration in Article 335**. This is the reason why the instances of rape committed by the appellant against AAA from 1987 to 1993 cannot be regarded as qualified rape.

The circumstances of minority and relationship, which qualify the crime of rape and require the imposition of the death penalty, came about only when Republic Act No. 7659 took effect on 1 January 1994. Therefore, for the crime of rape committed by the appellant against AAA in January, 1994 (Criminal Case No. 0305-SPL), the applicable law is Article 335, as amended by Republic Act No. 7659. The

minority of AAA was properly proven by the prosecution by presenting her Certificate of Live Birth showing that she was born on 1 December 1976; therefore, in January, 1994, she was only 17 years old, still a minor. The relationship between AAA and the appellant was also proven by AAA's Certificate of Live Birth. Moreover, it was admitted by the appellant that AAA is indeed, his eldest daughter. Having said that, this Court finds the appellant guilty beyond reasonable doubt of the crime of qualified rape for the rape committed in January, 1994 and imposes upon him the penalty of death. However, pursuant to Republic Act No. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the penalty to be meted out to the appellant shall be *reclusion perpetua*.

As to damages. This Court affirms the award of ₱50,000.00 as civil indemnity given by the lower courts to the victim for each count of rape committed in 1987 to 1993. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[74]

Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma, with mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.[75] Thus, this Court finds that the award of moral damages by both lower courts, in the amount of ₱50,000.00 for the each count of rape, was proper.

As regards the award of exemplary damages for the crimes of rape committed in 1987 to 1993, Article 2230 of the New Civil Code provides:

> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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[74] *People v. Callos*, 424 Phil. 506, 516 (2002).

[75] *People v. Docena*, 379 Phil. 903, 917-918 (2000).

In this case, there being no aggravating circumstance that can be considered, because at the time of the commission of the crime, minority and relationship were not yet considered as aggravating circumstances, the award of exemplary damages by the lower courts will have to be deleted.

For the crime of qualified rape committed in January, 1994, the civil indemnity as well as the moral damages should be increased from ₱50,000.00 to ₱75,000.00, and the award for exemplary damages should be reduced from ₱30,000.00 to ₱25,000.00. The same is in accordance with this Court's ruling in *People v. Sambrano*,[76] 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.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00516, dated 17 March 2001 is hereby *MODIFIED* as follows: (1) in Criminal Cases No. 0299-SPL to 0301-SPL, 0303-SPL and 0304-SPL, the appellant Medardo Crespo *y* Cruz is hereby found *GUILTY* beyond reasonable doubt of the crime of rape committed against his own daughter beginning 1987 until 1993, except 1991, and is hereby sentenced to suffer the penalty of *reclusion perpetua* in each case. He is further ordered to pay the private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in each case. The award of exemplary damages by the lower courts was deleted for lack of legal basis; (2) in Criminal Case No. 0305-SPL the appellant is hereby found *GUILTY* of the

[76] 446 Phil. 145, 161-162 (2003).

crime of qualified rape committed against his own daughter in January, 1994 and is hereby sentenced to suffer the penalty of *reclusion perpetua* pursuant to Republic Act No. 9346. He is further ordered to indemnify the private complainant in the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages; and (3) in Criminal Case No. 0302-SPL, the appellant is hereby *ACQUITTED*, as the private complainant herself admitted that nothing happened in the year 1991.

SO ORDERED.

Tinga,[*] *Velasco, Jr.,*[*] *Nachura,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.C. No. 7781. September 12, 2008]

DOLORES L. DELA CRUZ, MILAGROS L. PRINCIPE, NARCISA L. FAUSTINO, JORGE V. LEGASPI, and JUANITO V. LEGASPI, *complainants, vs.* **ATTY. JOSE R. DIMAANO, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIAL LAW; INSTRUMENT MUST BE ACKNOWLEDGED ACCORDING TO RULES TO BE CONSIDERED AUTHENTIC; APPEARANCE OF PARTIES TO THE DOCUMENT, REQUIRED. — Notaries public should refrain from affixing their signature and notarial seal on a document

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[*] Per Special Order No. 517, dated 27 August 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justices Dante O. Tinga and Presbitero J. Velasco, Jr. to replace Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez, who are on official leave.

unless the persons who signed it are the same individuals who executed and personally appeared before the notaries public to attest to the truth of what are stated therein, for under Section 1 of Public Act No. 2103 or the Notarial Law, an instrument or document shall be considered authentic if the acknowledgment is made in accordance with the following requirements: (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. Without the appearance of the person who actually executed the document in question, notaries public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. Furthermore, notaries public are required by the Notarial Law to certify that the party to the instrument has acknowledged and presented before the notaries public the proper residence certificate (or exemption from the residence certificate) and to enter its number, place, and date of issue as part of certification.

2. ID.; 2004 RULES ON NOTARIAL PRACTICE; PARTY TO THE INSTRUMENT MUST PRESENT COMPETENT EVIDENCE OF IDENTITY. — Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* now requires a party to the instrument to present competent evidence of identity. Sec. 12 provides: Sec. 12. Competent Evidence of Identity. –– The phrase "competent evidence of identity" refers to the identification of an individual based on: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, *Barangay* certification, Government Service Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card,

senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certificate from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development certification [as amended by A.M. No. 02-8-13-SC dated February 19, 2008]; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

3. ID.; NOTARIES PUBLIC; IMPORTANCE OF NOTARY, EMPHASIZED. — Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest. It must be remembered that notarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution. A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public on notarized documents will be eroded.

APPEARANCES OF COUNSEL

Ligon Solis Ilao Law Firm for complainants.

D E C I S I O N

VELASCO, JR., *J.*:

In their complaint for disbarment against respondent Atty. Jose R. Dimaano, Jr., Dolores L. Dela Cruz, Milagros L. Principe, Narcisa L. Faustino, Jorge V. Legaspi, and Juanito V. Legaspi alleged that on July 16, 2004, respondent notarized a document

denominated as *Extrajudicial Settlement of the Estate with Waiver of Rights* purportedly executed by them and their sister, Zenaida V.L. Navarro. Complainants further alleged that: (1) their signatures in this document were forged; (2) they did not appear and acknowledge the document on July 16, 2004 before respondent, as notarizing officer; and (3) their purported community tax certificates indicated in the document were not theirs.

According to complainants, respondent had made untruthful statements in the acknowledgment portion of the notarized document when he made it appear, among other things, that complainants "personally came and appeared before him" and that they affixed their signatures on the document in his presence. In the process, complainants added, respondent effectively enabled their sister, Navarro, to assume full ownership of their deceased parents' property in Tibagan, San Miguel, Bulacan, covered by Transfer Certificate of Title No. T-303936 and sell the same to the Department of Public Works and Highways.

In his answer, respondent admitted having a hand in the preparation of the document in question, but admitted having indeed notarized it. He explained that "he notarized [the] document in good faith relying on the representation and assurance of Zenaida Navarro that the signatures and the community tax certificates appearing in the document were true and correct." Navarro would not, according to respondent, lie to him having known, and being neighbors of, each other for 30 years. Finally, respondent disclaimed liability for any damage or injury considering that the falsified document had been revoked and canceled.

In his Report and Recommendation, the Investigating Commissioner of the Office of the Commission on Bar Discipline, Integrated Bar of the Philippines (IBP), found the following as established: (1) the questioned document bore the signatures and community tax certificates of, and purports to have been executed by, complainants and Navarro; (2) respondent indeed notarized the questioned document on July 16, 2004; (3) complainants did not appear and acknowledge the document before respondent on July 16, 2004;

(4) respondent notarized the questioned document only on Navarro's representation that the signatures appearing and community tax certificates were true and correct; and (5) respondent did not ascertain if the purported signatures of each of the complainants appearing in the document belonged to them.

The Commission concluded that with respondent's admission of having notarized the document in question against the factual backdrop as thus established, a clear case of falsification and violation of the Notarial Law had been committed when he stated in the Acknowledgment that:

> Before me, on this 16th day of July 16, 2004 at Manila, personally came and appeared the above-named persons with their respective Community Tax Certificates as follows:
>
> x x x x x x x x x
>
> who are known to me to be the same persons who executed the foregoing instrument and they acknowledge to me that the same is their own free act and deed. x x x

For the stated infraction, the Commission recommended, conformably with the Court's ruling in *Gonzales v. Ramos*,[1] that respondent be suspended from the practice of law for one (1) year; that his notarial commission, if still existing, be revoked; and that he be disqualified for reappointment as notary public for two (2) years. On September 28, 2007, the IBP Board of Governors passed Resolution No. XVIII-2007-147, adopting and approving the report and recommendation of the Commission.

We agree with the recommendation of the Commission and the premises holding it together. It bears reiterating that notaries public should refrain from affixing their signature and notarial seal on a document unless the persons who signed it are the same individuals who executed and personally appeared before the notaries public to attest to the truth of what are stated therein, for under Section 1 of Public Act No. 2103 or the Notarial Law, an instrument or document shall be considered authentic

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[1] A.C. No. 6649, June 21, 2005, 460 SCRA 352.

if the acknowledgment is made in accordance with the following requirements:

> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.[2]

Without the appearance of the person who actually executed the document in question, notaries public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[3] Furthermore, notaries public are required by the Notarial Law to certify that the party to the instrument has acknowledged and presented before the notaries public the proper residence certificate (or exemption from the residence certificate) and to enter its number, place, and date of issue as part of certification.[4] Rule II, Sec. 12 of the *2004 Rules on Notarial Practice*[5] now requires a party to the instrument to present competent evidence of identity. Sec. 12 provides:

> Sec. 12. Competent Evidence of Identity.— The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual,

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[2] Cited in 2 L.M. Tañada & F.A. Rodrigo, *MODERN PHILIPPINE LEGAL FORMS* 763 (6th ed., 1997).

[3] *Domingo v. Reed*, G.R. No. 157701, December 9, 2005, 477 SCRA 227, 238; *Lopena v. Cabatos*, A.C. No. 3441, August 11, 2005, 466 SCRA 419, 426.

[4] *Soriano v. Basco*, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 429.

[5] Took effect on August 1, 2004.

such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, *Barangay* certification, Government Service Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certificate from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development certification [as amended by A.M. No. 02-8-13-SC dated February 19, 2008]; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

One last note. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest. It must be remembered that notarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution.[6] A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public on notorized documents will be eroded.

WHEREFORE, for breach of the Notarial Law, the notarial commission of respondent Atty. Jose R. Dimaano, Jr., if still existing, is *REVOKED*. He is *DISQUALIFIED* from being commissioned as notary public for a period of two (2) years and *SUSPENDED* from the practice of law for a period of one (1) year, effective upon receipt of a copy of this Decision, with *WARNING* that a repetition of the same negligent act shall be dealt with more severely.

[6] *Domingo, supra* note 3.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[A.C. No. 7820. September 12, 2008]

ATTY. RICARDO M. SALOMON, JR., *complainant, vs.* **ATTY. JOSELITO C. FRIAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CANONS OF PROFESSIONAL ETHICS; DEALING WITH TRUST PROPERTY; VIOLATION THEREOF IS GRAVE MISCONDUCT; LAWYER TRIFLED WITH WRIT OF ATTACHMENT IN CASE AT BAR.— A writ of attachment issues to prevent the defendant from disposing of the attached property, thus securing the satisfaction of any judgment that may be recovered by the plaintiff or any proper party. When the objects of the attachment are destroyed, then the attached properties would necessarily be of no value and the attachment would be for naught. From the evidence adduced during the investigation, there is no question that Atty. Frial is guilty of grave misconduct arising from his violation of Canon 11 of the *Canons of Professional Ethics* that states: 11. *Dealing with trust property.* The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client. Money of the client or collected for the client **or**

other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him. A lawyer is first and foremost an officer of the court. As such, he is expected to respect the court's order and processes. Atty. Frial miserably fell short of his duties as such officer. He trifled with the writ of attachment the court issued. Very patently, Atty. Frial was remiss in his obligation of taking good care of the attached cars. He also allowed the use of the Nissan Sentra car by persons who had no business using it. He did not inform the court or at least the sheriff of the destruction of the Volvo car. What is worse is that he took custody of them without so much as informing the court, let alone securing, its authority. For his negligence and unauthorized possession of the cars, we find Atty. Frial guilty of infidelity in the custody of the attached cars and grave misconduct.

2. ID.; LAWYERS; DISBARMENT; PROPRIETY THEREOF. — The Court is not inclined to impose, as complainant urges, the ultimate penalty of disbarment. The rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and moral character of a lawyer as an officer of the court and member of the bar. With the view we take of the case, there is no compelling evidence tending to show that Atty. Frial intended to pervert the administration of justice for some dishonest purpose. Disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person. In the case of Atty. Frial, the Court finds that a year's suspension from the practice of his legal profession will provide him with enough time to ponder on and cleanse himself of his misconduct.

APPEARANCES OF COUNSEL

Arsenio G. Bonifacio II for complainant.

D E C I S I O N

VELASCO, JR., *J.*:

In his sworn complaint[1] filed before the Integrated Bar of the Philippines (IBP) on December 22, 2006, complainant Atty. Ricardo M. Salomon, Jr. charged respondent Atty. Joselito C. Frial with violating his Lawyer's Oath and/or gross misconduct arising from his actuations with respect to two attached vehicles. Complainant, owner of the vehicles in question, asked that Atty. Frial be disbarred.

The instant complaint has its beginning in the case, *Lucy Lo v. Ricardo Salomon et al.*, docketed as Civil Case No. 05-111825 before the Regional Trial Court in Manila, in which a writ of preliminary attachment was issued in favor of Lucy Lo, Atty. Frial's client. The writ was used to attach two (2) cars of complainant––a black 1995 Volvo and a green 1993 Nissan Sentra.

According to Atty. Salomon, the attaching sheriff of Manila, instead of depositing the attached cars in the court premises, turned them over to Atty. Frial, Lo's counsel. Atty. Salomon claimed that on several occasions, the Nissan Sentra was spotted being used by unauthorized individuals. For instance, on December 26, 2005, *barangay* captain Andrew Abundo saw the Nissan Sentra in front of a battery shop on Anonas St., Quezon City. On February 18, 2006, Architect Roberto S. Perez and three others saw and took video and photo shots of the same car while in the Manresa Shell station at P. Tuazon Blvd. corner 20th Avenue, Quezon City. Also sometime in June 2006, Robert M. Perez, complainant's driver, saw the said car in another Shell station near Kamias Street. On December 16, 2006, Arlene Carmela M. Salomon spotted it driven by bondsman Ferdinand Liquigan allegedly with Atty. Frial's consent. As Atty. Salomon further alleged, when the misuse of the car was reported,

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[1] *Rollo*, pp. 1-5. Attached to the complaint are the affidavits of Andrew Abundo, Roberto Perez, Robert Perez, and Dante Batingan and photocopies of the disputed vehicles.

paving for Liquigan's apprehension, Atty. Frial, in a letter, acknowledged having authorized Liquigan to bring the car in *custodia legis* to a mechanic.

As to the Volvo, Atty. Salomon averred that during mediation, Atty. Frial deliberately withheld information as to its whereabouts. As it turned out later, the Volvo was totally destroyed by fire, but the court was not immediately put on notice of this development.

In his Answer,[2] Atty. Frial admitted taking custody of the cars thru his own undertaking, without authority and knowledge of the court. The subject vehicles, according to him, were first parked near the YMCA building in front of the Manila City Hall where they remained for four months. He said that when he went to check on the vehicles' condition sometime in December 2005, he found them to have been infested and the wirings underneath the hoods gnawed by rats. He denied personally using or allowing others the use of the cars, stating in this regard that if indeed the Nissan Sentra was spotted on Anonas St., Quezon City on December 26, 2005, it could have been the time when the car was being transferred from the YMCA. The February 18, 2006 and June 2006 sightings, so Atty. Frial claimed, possibly occurred when the Nissan Sentra was brought to the gas station to be filled up. He said that the car could not have plausibly been spotted in Project 3 on December 13, 2006, parked as it was then in front of Liquigan's house for mechanical check-up.

During the mandatory conference/hearing before the IBP Commission on Bar Discipline, the parties agreed on the following key issues to be resolved: (1) whether or not Atty. Frial used the cars for his personal benefit; and (2) whether or not Atty. Frial was guilty of infidelity in the custody of the attached properties.

Thereafter and after the submission by the parties of their respective position papers, the Commission submitted a Report dated October 9, 2007 which the IBP Board of Governors

[2] *Id.* at 61-63.

forthwith adopted and then transmitted to this Court. In the Report, the following were deduced from the affidavits of Andrew Abundo, Roberto Perez, Robert Perez, and Dante Batingan: (1) at no time was Atty. Frial seen driving the Sentra; (2) Abundo learned that at that time the car was spotted at the battery shop, the unnamed driver bought a new battery for the car which was not inappropriate since a battery was for the preservation of the car; (3) Atty. Frial admitted that the Nissan Sentra was seen gassed up on February 18, 2006 and in June 2006 and there was no reason to gas up the Nissan Sentra on those times unless it was being used; (4) Roberto Perez said the Nissan Sentra was used to buy goat's meat; and (5) photos of the Nissan Sentra in different places obviously showed it was being used by others.

In the same Report, the Commission observed that while there is perhaps no direct evidence tying up Atty. Frial with the use of the Nissan Sentra, the unyielding fact remains that it was being used by other persons during the time he was supposed to have custody of it. In addition, whoever drove the Nissan Sentra on those occasions must have received the car key from Atty. Frial. When Atty. Frial took custody of the Nissan Sentra and Volvo cars, he was duty bound to keep and preserve these in the same condition he received them so as to fetch a good price should the vehicles be auctioned.

As to the burnt Volvo, Atty. Frial admitted receiving it in excellent condition and that there was no court order authorizing him to remove the car from the YMCA premises. Admitted too was the fact that he secured the release of the Volvo on the strength alone of his own written undertaking;[3] and that the car was almost totally destroyed by fire on February 4, 2006 at 1:45 a.m.[4] while parked in his residence. He could not, however, explain the circumstances behind the destruction, but admitted not reporting the burning to the court or the sheriff. While the burning of the car happened before the mediation hearing, Atty. Frial, upon inquiry of Atty. Salomon, did not give information as to the whereabouts of the cars.

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[3] *Id.* at 44.

[4] *Id.* at 30.

The destruction of the Volvo in Atty. Frial's residence was not an ordinary occurrence; it was an event that could have not easily escaped his attention. Accordingly, there is a strong reason to believe that Atty. Frial deliberately concealed the destruction of said vehicle from the court during the hearings in Civil Case No. 05-111828, which were the opportune times to reveal the condition of the Volvo car.

On the basis of the foregoing premises, the Commission concluded that Atty. Frial committed acts clearly bearing on his integrity as a lawyer, adding that he failed to observe the diligence required of him as custodian of the cars. The Commission thus recommended that Atty. Frial be suspended from the practice of law for one (1) year.

The findings and the recommendation of the Commission are well-taken.

A writ of attachment issues to prevent the defendant from disposing of the attached property, thus securing the satisfaction of any judgment that may be recovered by the plaintiff or any proper party.[5] When the objects of the attachment are destroyed, then the attached properties would necessarily be of no value and the attachment would be for naught.

From the evidence adduced during the investigation, there is no question that Atty. Frial is guilty of grave misconduct arising from his violation of Canon 11 of the *Canons of Professional Ethics* that states:

> 11. *Dealing with trust property*
>
> The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client **or other trust property coming into the possession of the lawyer should be reported and accounted for promptly** and should not under any circumstances be commingled with his own or be used by him. (Emphasis ours.)

[5] *Olib v. Pastoral*, G.R. No. 81120, August 20, 1990, 188 SCRA 692, 699.

A lawyer is first and foremost an officer of the court. As such, he is expected to respect the court's order and processes. Atty. Frial miserably fell short of his duties as such officer. He trifled with the writ of attachment the court issued.

Very patently, Atty. Frial was remiss in his obligation of taking good care of the attached cars. He also allowed the use of the Nissan Sentra car by persons who had no business using it. He did not inform the court or at least the sheriff of the destruction of the Volvo car. What is worse is that he took custody of them without so much as informing the court, let alone securing, its authority.

For his negligence and unauthorized possession of the cars, we find Atty. Frial guilty of infidelity in the custody of the attached cars and grave misconduct. We must mention, at this juncture, that the victorious parties in the case are not without legal recourse in recovering the Volvo's value from Atty. Frial should they desire to do so.

The Court, nevertheless, is not inclined to impose, as complainant urges, the ultimate penalty of disbarment. The rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and moral character of a lawyer as an officer of the court and member of the bar.[6] With the view we take of the case, there is no compelling evidence tending to show that Atty. Frial intended to pervert the administration of justice for some dishonest purpose.

Disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired.[7] This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person. In the case of Atty. Frial, the Court finds that a year's suspension from the practice of his legal profession will provide him with enough time to ponder on and cleanse himself of his misconduct.

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[6] *Saquing v. Mora*, A.C. No. 6678, October 9, 2006, 504 SCRA 1, 7; *Bantolo v. Castillon, Jr.*, A.C. No. 6589, December 19, 2005, 478 SCRA 443, 449.

[7] *Saquing*, *supra*.

WHEREFORE, Atty. Joselito C. Frial is adjudged guilty of grave misconduct and infidelity in the custody of properties in *custodia legis*. He is hereby *SUSPENDED* from the practice of law for a period of one (1) year effective upon his receipt of this Decision. Let notice of this Decision be entered in his personal record as an attorney with the Office of the Bar Confidant and notice of the same served on the IBP and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160725. September 12, 2008]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PUREFOODS CORPORATION, SOLID DEVELOPMENT CORPORATION, JOSE ORTEGA, JR., SILVESTRE BAUTISTA, ALFREDO CABANDE, HEIRS OF VICTOR TRINIDAD, and MOLDEX REALTY INCORPORATED,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; EASEMENT OF RIGHT-OF-WAY OVER A PARCEL OF LAND THAT WILL BE TRAVERSED BY NAPOCOR'S TRANSMISSION LINES; FULL MARKET VALUE OF AFFECTED PROPERTIES MUST BE PAID; DISCUSSED. — The question of just compensation for an easement of right-of-way over a parcel of land that will be traversed by NAPOCOR's transmission lines

has already been answered in *National Power Corporation v. Manubay Agro-Industrial Development Corporation*. In that case, the Court held that because of the nature of the easement, which will deprive the normal use of the land for an indefinite period, just compensation must be based on the full market value of the affected properties. Also, in *National Power Corporation v. Aguirre-Paderanga,* the Court noted that the passage of NAPOCOR's transmission lines over the affected property causes not only actual damage but also restriction on the agricultural and economic activity normally undertaken on the entire property. While NAPOCOR in that case was seeking to acquire only an easement of right-of-way, the Court nonetheless ruled that the just compensation in the amount of only 10% of the market value of the property was not enough to indemnify the incursion on the affected property. The Court explained therein that expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines, as in the present case, also falls within the ambit of the term "expropriation". In eminent domain or expropriation proceedings, the general rule is that the just compensation to which the owner of the condemned property is entitled is the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor. The aforementioned rule, however, is modified where only a part of a certain property is expropriated. In such a case the owner is not restricted to compensation for the portion actually taken. In addition to the market value of the portion taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property. At the same time, from the total compensation must be deducted the value of the consequential benefits."

2. ID.; ID.; ID.; ID.; ID.; ID.; RA NOS. 6395 AND 8974 GIVING JUST COMPENSATION OF ONLY 10% OF THE MARKET VALUE OF THE PROPERTY SUBJECT OF EASEMENT OF RIGHT-OF-WAY, SERVES ONLY AS A GUIDING PRINCIPLE. — While Section 3 (a) of R.A. No. 6395, as amended, and the implementing rule of R.A. No. 8974 indeed state that only 10% of the market value of the property is due to the owner of the

property subject to an easement of right-of-way, said rule is not binding on the Court. Well-settled is the rule that the determination of "just compensation" in eminent domain cases is a judicial function. In *Export Processing Zone Authority v. Dulay*, the Court held that any valuation for just compensation laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

3. ID.; ID.; ID.; ACTION UPON COMMISSIONER'S REPORT; ELUCIDATED. — The duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and to fulfill its duty in this respect, the court will be obliged to exercise its discretion in dealing with the report as the particular circumstances of the case may require. Rule 67, Section 8 of the 1997 Rules of Civil Procedure clearly shows that the trial court has the discretion to act upon the commissioners' report in any of the following ways: (1) it may accept the same and render judgment therewith; or (2) for cause shown, it may [a] recommit the report to the commissioners for further report of facts; or [b] set aside the report and appoint new commissioners; or [c] accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Castillo Laman Tan Pantaleon and *San Jose* for Solid Dev't. Corp.

David R. Hilario for Purefoods Corp.
Macavinta & Sta. Ana Law Offices for Moldex Realty, Inc.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated 07 November 2003 of the Court of Appeals in CA-G.R. CV No. 73460 which affirmed with modification the Decision[3] dated 17 September 2001 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 18 in Civil Case No. 915-M-97 for eminent domain.

The following factual antecedents are undisputed and are matters of record.

Petitioner National Power Corporation (NAPOCOR) is a government-owned and controlled corporation created by virtue of Republic Act (R.A.) No. 6395,[4] as amended, for the purpose of undertaking the development of hydroelectric power generation, the production of electricity from nuclear, geothermal and other sources, and the transmission of electric power on a nationwide basis. It is also empowered to acquire property incident to or necessary, convenient or proper to carry out the purposes for which it was created,[5] enter private property in the lawful performance of its business purposes provided that the owners of such private property shall be indemnified for any damage that may be caused thereby, and exercise the right of eminent domain.

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[1] *Rollo*, pp. 8-36.

[2] Penned by *J.* Mercedes Gozo-Dadole, Acting Chairman of the Special Fifth Division and concurred in by *JJ.* Juan Q. Enriquez, Jr. and Rosmari D. Carandang.

[3] CA *rollo*, pp. 55-60.

[4] ENTITLED, "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION"; effective 10 September 2001.

[5] Republic Act No. 6395, Sec. 3(h).

To construct and maintain its Northwestern Luzon Project, or particularly the San Jose-San Manuel 500 KV Transmission Line Project, NAPOCOR had to acquire an easement of right-of-way over certain parcels of land situated in the towns of Angat, San Rafael and San Ildefonso and in the city of San Jose del Monte—all in the province of Bulacan.

On 5 November 1997, NAPOCOR filed a special civil action for eminent domain[6] before the RTC of Malolos, Bulacan. Named defendants were the vendors and vendees of the affected parcels of land, namely, Arcadio T. Cruz, Calixto Cruz, Deogracias C. Mendoza, Hacienda Sapang Palay, and herein respondents Purefoods Corporation (Purefoods), Solid Development Corporation (SDC), Jose Ortega, Jr., Silvestre Bautista, Alfredo Cabande, the Heirs of Victor Trinidad (Heirs of Trinidad) and Moldex Realty Incorporated (Moldex).

The complaint alleged that the defendants were either the registered owners or the claimants of the affected pieces of property described as follows:

Owner/ Claimant	Lot/ Blk. No.	Tax Dec. No.	Title No.	Total Area In Sq. M.	Area Affected In Sq. M.	Assessed Value ₱	Classification Of Land
1. Arcadio T. Cruz/ Purefoods Corp.	2965	95-01010-01090	RT-73-15217	246,061	11,083	₱3,324.90	Cogon land
2. Calixto Cruz/ Purefoods Corp.	1948	97-01010-00153	T-278-287 (M)	27,981	4,161	14,979.60	Poultry/ Piggery/ Livestock Site
3. Deogracias C. Mendoza/ Moldex Realty Corp.	1258	94-21011-02796	-	18,992	3,387.50	7,398.31	Agri-cultural

[6] Records, pp. 1-9.

4. Hacienda Sapang Palay/ Moldex Realty Corporation	1255	96-21017-00134	-	1,450,810	25,170	77,669.12	Agri-cultural
5. Solid Dev't. Corp. rep. by Domingo P. Gaw	1889	93-020-00171	CLOA-T-2322	21,743	6,871	8,039.00	Riceland
6. Jose Ortega, Jr.	2186-C	00027	T-50926	12,060	2,471	4,293.27	Riceland/ Pasture
7. Silvestre Bautista/ Alfredo Cabande rep. by Temestocles Cabande, Jr.	1981-B	93-020-00564	-	7,785	5,927	6,934.70	Agri-cultural
8. Heirs of Lucia *Vda. de* Trinidad/ Alfredo Cabande rep. by Temestocles Cabande, Jr.	1981-A	93-020-00563	CLOA-T-6359	13,200	3,356	3,926.52	Agri-cultural
	[Total]			62,426.50 sq. m.		₱126,565.42[7]	

The complaint also alleged the public purpose of the Northwestern Luzon Project, as well as the urgency and necessity of acquiring easements of right-of-way over the said parcels of land consisting of 62,426.50 square meters. It also averred that the affected properties had not been expropriated for public

[7] *Id.* at 3-4.

use and were selected by NAPOCOR in a manner compatible with the greatest public good and the least private injury and that the negotiations between NAPOCOR and the defendants had failed.[8] The complaint prayed, among others, that the RTC issue a writ of possession in favor of NAPOCOR in the event that it would be refused entry to the affected properties.[9]

Among the several defendants, only herein respondents Heirs of Trinidad,[10] SDC,[11] Moldex[12] and Purefoods[13] filed their respective answers.

For their part, respondent Heirs of Trinidad claimed that they should be indemnified for the value of the affected property based on the prevailing market purchase price of ₱750.00/sq m and that co-defendant Alfredo Cabande, not being the owner of any of the affected properties, should not be compensated. They added that there are other parcels of land within the area which are more suitable for NAPOCOR's project.

Respondent Moldex, for its part, alleged that the expropriation of part of the landholding in which it has a propriety interest would divest the peripheral area of its value and render the same totally useless; thus, it should be compensated for the loss of the peripheral area as well.[14]

In praying for the dismissal of the complaint, respondent SDC averred that the taking would not serve any public purpose and that the selection of its property for expropriation would not be compatible with the greatest public good and the least private injury.[15]

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[8] *Id.* at 4-5.

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

[10] *Id.* at 38-44.

[11] *Id.* at 91-95.

[12] *Id.* at 137-142.

[13] *Id.* at 115-119.

[14] *Id.* at 140.

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

Respondent Purefoods similarly prayed for the dismissal of the complaint on the ground of the failure of NAPOCOR to append copies of the pertinent Torrens titles to the complaint. It also averred that co-defendants Arcadio and Calixto Cruz had no rights or interests in the affected properties as they both had already sold the properties to it. As to the amount of just compensation, it averred that NAPOCOR's offer was excessively low, undervalued and obsolete and that its action had caused extreme prejudice to its investment and further delay in the construction and development of its piggery business, thereby adversely affecting its operation.[16]

Meanwhile, NAPOCOR filed its Urgent *Ex Parte* Motion for the Issuance of Writ of Possession[17] on 19 December 1997 wherein it alleged that it had deposited with the Land Bank of the Philippines, NPC Branch, Diliman, Quezon City the amount of ₱126,565.42 as provisional valuation of the properties sought to be expropriated and that it had sent a Notice to Take Possession[18] of said properties. On 06 January 1998, the RTC directed the clerk of court to issue a writ of possession.[19]

After the pre-trial conference, the RTC issued an Order[20] dated 14 June 1999, reflecting the parties' agreement to limit the issues to the amount of just compensation and to whether respondent Moldex was entitled to just compensation on the devaluation of the peripheral area within its property.

When the first set of appointed commissioners failed to discharge their duties, the RTC appointed a second set of commissioners— namely, Ret. General Juanito Malto, Atty. Emmanuel Ortega and Atty. Antonio V. Magdasoc—who took their oaths of office and forthwith conducted a hearing.[21] On

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[16] *Id.* at 116-118.

[17] *Id.* at 100-104.

[18] *Id.* at 106.

[19] *Id.* at 165.

[20] *Id.* at 286.

[21] *Id.* at 328-335.

18 May 2001, the commissioners submitted separate reports to the RTC which formed part of the case records.[22] In the main, the commissioners recommended that the compensation due from NAPOCOR be based on the fair market value of ₱600.00/sq m for properties belonging to respondent Moldex and ₱400.00/sq m for the undeveloped or underdeveloped properties belonging to the rest of the respondents.[23] The case was then submitted for decision.[24]

On 17 September 2001, the RTC rendered a Decision,[25] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, Judgment is hereby rendered as follows:

1. Ordering the expropriation of:

   a. 3,305 square meters portion of 18,992 square meters of land of Lot 1258-A, situated in San Jose del Monte, Bulacan, described and covered by Tax Declaration No. 94-21011-02796 issued by then Municipal Assessor of San Jose del Monte, Bulacan, owned by/registered in the name of MOLDEX REALTY INCORPORATED;

   b. 24,180 square meters portion of 1,450,810 square meters of land (Lot 2A-1, formerly Lot 1255), situated in San Jose del Monte, Bulacan, described in and covered by Tax Declaration No. 96-21017-00134 by then Municipal Assessor of San Jose del Monte, Bulacan, owned by/registered in the name of MOLDEX REALTY INCORPORATED;

   c. 11,083 square meters portion of 246,061 square meters of land (Lot 2965), situated in Angat, Bulacan, described in and covered by TCT No. RT-73-15217 (T-274516-M) issued by the Register of Deeds of Bulacan, owned by/registered in the name of PUREFOODS CORPORATION;

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[22] *Id.* at 336-339.

[23] *Id.* at 339.

[24] *Id.* at 379.

[25] *Supra* note 3.

d. 4,161 square meters portion of 27,981 square meters of land (Lot 1948), situated in Angat, Bulacan described in and covered by TCT No. T-278287 (M) issued by the Register of Deeds of Bulacan, owned by/registered in the name of PUREFOODS CORPORATION;

e. 6,871 square meters portion of 27,743 square meters of land (Lot 1889), situated in San Idelfonso, Bulacan, described in and covered by CLOA T-2322, issued by the Register of Deeds of Bulacan, owned by/registered in the name of SOLID DEVELOPMENT CORPORATION;

f. 2,471 square meters portion of 12,060 square meters of land (Lot 2186-C), situated in San Rafael, Bulacan, described in and covered by TCT No. T-50926, issued by the Register of Deeds of Bulacan, owned by/registered in the name of Jose Ortega, Jr.;

g. 5,927 square meters portion of 7,785 square meters of land (Lot 1981-B), situated in San Idelfonso, Bulacan, described in and covered by Tax Declaration No. 93-020-00564, issued by the Municipal Assessor of San Ildefonso, Bulacan, owned by/registered in/claimed by Silvestre Bautista/Alfredo Cabande;

h. 3,356 square meters portion of 13,200 square meters of land (Lot 1981-A), situated in San Ildefonso, Bulacan, described in and covered by CLOA T-6359, issued by the Register of Deeds of Bulacan, owned by/registered in/claimed by the Heirs of Victor Trinidad/Alfredo Cabande,

all in favor of plaintiff NATIONAL POWER CORPORATION and against above-named defendants, for the public use or purpose described in the Complaint and in this Decision;

2. Fixing the amount of Six Hundred Pesos (₱600.00) per square meter for 27,485 square meters of land of MOLDEX REALTY INCORPORATED as just compensation and fixing the amount of Four Hundred Pesos (₱400.00) per square meter for 15,244 square meters of land of PUREFOODS CORPORATION, 6,871 square meters of land of SOLID DEVELOPMENT CORPORATION, 2,471 square meters of land of JOSE ORTEGA, JR., 5,927 square meters of land of SILVESTRE BAUTISTA/ALFREDO CABANDE and 3,356 square meters of land of the HEIRS OF VICTOR TRINIDAD/ ALFREDO CABANDE, as just compensation, to be paid by plaintiff NATIONAL POWER CORPORATION to said defendants/claimants

or their representatives, deducting therefrom any unpaid and overdue real estate taxes due to the Government;

3. ordering payment of said just compensation by plaintiff NATIONAL POWER CORPORATION to named defendants or the latter's representatives with legal interest at 6% per annum from January 6, 1998 until finality of this Decision and at 12% per annum from its finality until full payment thereof.

Let each copy of this DECISION be furnished to and recorded in the Office of the Register of Deeds of Bulacan, Municipal Assessor of Angat, Bulacan, City Assessor of City of San Jose del Monte, Bulacan, Municipal Assessor of San Ildefonso, Bulacan and Municipal Assessor of San Rafael, Bulacan.

No costs is hereby ordered since plaintiff NATIONAL POWER CORPORATION is, under its Charter, exempt from payment of costs of the proceedings.

SO ORDERED.[26]

Respondent Moldex sought reconsideration of the aforesaid decision[27] but the same was denied by the RTC in its Order[28] dated 07 December 2001. Both NAPOCOR and respondent Moldex filed separate appeals before the Court of Appeals.

Respondent Moldex argued that the RTC erred in the following instances: (1) in ruling that just compensation should be paid at ₱600.00/sq m and not ₱1,600.00/sq m; (2) in not imposing an interest of 12% per annum reckoned from the taking until the finality of the decision; and (3) in not ordering the payment of just compensation for the peripheral portion of the affected property.

For its part, NAPOCOR assailed the RTC's valuations of the properties at ₱600.00/sq m and ₱400.00/sq m, contending that the same are not based on the value of the properties at the time of taking when the properties were still agricultural in nature. It claimed that only an easement fee, which should not

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[26] *Id.* at 58-59.

[27] Records, pp. 388-394.

[28] *Id.* at 406.

exceed 10% of the declared market value, should be paid to respondents. It also questioned the award of interest of 12% per annum from the finality of the decision until the full payment of the amount adjudged.

On 7 November 2003, the Court of Appeals rendered the assailed decision, affirming the RTC decision in all respects except for the period during which the interest of 12% per annum would accrue.[29]

Only respondent Moldex sought reconsideration of the 07 November 2003 Decision of the Court of Appeals.[30]

NAPOCOR, through the Office of the Solicitor General (OSG), elevated the case to this Court via a petition for review on *certiorari*.[31] Respondent Moldex nonetheless filed a comment on the petition, stating that its motion for reconsideration of the 7 November 2003 Decision of the Court of Appeals was still pending and that hence taking cognizance of the petition would be premature.[32] Respondents Heirs of Trinidad,[33] Purefoods[34] and SDC[35] likewise filed separate comments on NAPOCOR's petition.

However, on 12 April 2004, NAPOCOR filed an Omnibus Motion To Withdraw Petition For Review On *Certiorari* And To Remand The Case To The Court Of Appeals,[36] informing the Court of the compromise agreement forged on 19 March 2004 between NAPOCOR and respondent Moldex. NAPOCOR subsequently filed a Manifestation and Motion,[37] praying that the case be remanded to the Court of Appeals for proper

[29] *Supra* note 2.

[30] CA *rollo*, pp. 270-283.

[31] *Supra* note 1.

[32] *Rollo*, pp. 89-101.

[33] *Id.* at 81-88.

[34] *Id.* at 121-129.

[35] *Id.* at 130-137.

[36] *Id.* at 140-144.

[37] *Id.* at 145-150.

disposition only insofar as respondent Moldex is concerned. Attached to the said pleading is a copy of the compromise agreement[38] dated 19 March 2004 and a copy of NAPOCOR Board Resolution No. 2003-13,[39] evincing that the proposed compromise settlement submitted by respondent Moldex has been duly approved.

In a Resolution[40] dated 2 June 2004, the Court resolved to defer action on NAPOCOR's omnibus motion and instead require respondent Moldex to comment thereon. On 7 July 2004, respondent Moldex filed a Comment,[41] confirming the existence of the compromise agreement and manifesting its conformity with the omnibus motion filed by the OSG. On 18 August 2004, the Court issued a Resolution granting the withdrawal of the petition only as regards respondent Moldex.[42]

In the instant petition, NAPOCOR is assailing the Court of Appeals' reliance on the commissioners' report in fixing just compensation based on the full market value of the affected properties. NAPOCOR contends that only an easement of right-of-way for the construction of the transmission line project is being claimed, thus, only an easement fee equivalent to 10% of the fair market value of the properties should be paid to the affected property owners. NAPOCOR cites Section 3A, R.A. 6395, as amended[43] and

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[38] *Id.* at 151-156.

[39] *Id.* at 157-158.

[40] *Id.* at 166-167.

[41] *Id.* at 168-171.

[42] *Id.* at 176.

[43] Republic Act 6395, as amended by Presidential Decree No. 938, Section 3A provides: In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

the implementing regulation of R.A. No. 8974[44] in support of this argument.

Respondent Purefoods counters that the appellate court's determination of just compensation is a factual finding, which may be reviewed by this Court only when the case falls within the recognized exceptions to the prohibition against factual review. Since the instant case does not fall under any of the exceptions, it argues that the issue of just compensation may not be reviewed in the instant proceeding.

On the other hand, there is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted

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In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall –

(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in cases any buildings, houses and similar structures are affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefore.

[44] ENTITLED "AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES"; effective 7 November 2000.

and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law.[45] In the instant case, NAPOCOR is raising a question of law, that is, whether or not only an easement fee of 10% of the market value of the expropriated properties should be paid to the affected owners. This issue does not call for the reevaluation of the probative value of the evidence presented but rather the determination of whether the pertinent laws cited by NAPOCOR in support of its argument are applicable to the instant case.

Now, to the core issue of just compensation.

The question of just compensation for an easement of right-of-way over a parcel of land that will be traversed by NAPOCOR's transmission lines has already been answered in *National Power Corporation v. Manubay Agro-Industrial Development Corporation*.[46] In that case, the Court held that because of the nature of the easement, which will deprive the normal use of the land for an indefinite period, just compensation must be based on the full market value of the affected properties. The Court explained, thus:

> Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. *Republic v. PLDT* held thus:
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> > "x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a

[45] *Gomez v. Sta. Ines*, G.R. No. 132537, 14 October 2005, 473 SCRA 25, 37.

[46] G.R. No. 150936, 18 August 2004, 437 SCRA 60.

> burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way."

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.[47]

Also, in *National Power Corporation v. Aguirre-Paderanga*,[48] the Court noted that the passage of NAPOCOR's transmission lines over the affected property causes not only actual damage but also restriction on the agricultural and economic activity normally undertaken on the entire property. While NAPOCOR in that case was seeking to acquire only an easement of right-of-way, the Court nonetheless ruled that the just compensation in the amount of only 10% of the market value of the property was not enough to indemnify the incursion on the affected property.

The Court explained therein that expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines, as in the present case, also falls within the ambit of the term "expropriation."[49] In eminent domain or expropriation proceedings, the general rule is that the just compensation to which the owner of the condemned property is entitled is the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor. The aforementioned

[47] *Id.* at 67-68.

[48] G.R. No. 155065, 28 July 2005, 464 SCRA 481.

[49] *Id.* at 493.

rule, however, is modified where only a part of a certain property is expropriated. In such a case the owner is not restricted to compensation for the portion actually taken. In addition to the market value of the portion taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property. At the same time, from the total compensation must be deducted the value of the consequential benefits."[50]

While Section 3(a) of R.A. No. 6395, as amended, and the implementing rule of R.A. No. 8974 indeed state that only 10% of the market value of the property is due to the owner of the property subject to an easement of right-of-way, said rule is not binding on the Court. Well-settled is the rule that the determination of "just compensation" in eminent domain cases is a judicial function.[51] In *Export Processing Zone Authority v. Dulay*,[52] the Court held that any valuation for just compensation laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[53] The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[54]

NAPOCOR argues that the Court of Appeals should not have adopted the commissioners' report hook, line and sinker because the same was based exclusively on relative prices of

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[50] *National Power Corporation v. Chiong*, 452 Phil. 649, 663-664 (2003).

[51] *Land Bank of the Philippines v. Celada*, G.R. No.164876, 23 January 2006.

[52] G.R. No. 59603, 29 April 1987, 149 SCRA 305.

[53] *Id.* at 314.

[54] *Id.* at 316.

adjoining lots without showing evidence on their proximity and of the sales of similar classification.

The duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and to fulfill its duty in this respect, the court will be obliged to exercise its discretion in dealing with the report as the particular circumstances of the case may require. Rule 67, Section 8 of the 1997 Rules of Civil Procedure clearly shows that the trial court has the discretion to act upon the commissioners' report in any of the following ways: (1) it may accept the same and render judgment therewith; or (2) for cause shown, it may [a] recommit the report to the commissioners for further report of facts; or [b] set aside the report and appoint new commissioners; or [c] accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.[55]

In the instant case, the Court finds no reversible error in the RTC's determination of just compensation even if the same was based on the commissioners' report, there being no showing that said report was tainted with irregularity, fraud or bias. Noteworthy are the following observations made by the Court of Appeals on the RTC's assessment of the commissioners' report:

> In the case at bar, the trial court based its determination of just compensation on the reports and proceedings made by the Commissioners, by adopting the findings of Commissioners' Ortega and Magdasoc who made a Joint Commissioners' Report. The aforesaid report has also taken into consideration the report made by the other Commissioner B/G Malto. In their joint report, the commissioners recommended that the fair market value of the property subject of the expropriation proceedings, owned by Moldex is ₱700.00 per square meter while other properties at ₱400.00. In the separate report of Commissioner Malto, at first it valued the subject properties

[55] *National Power Corporation v. Chiong*, 452 Phil. 649, 660 (2003).

at ₱700.00 per square meter and subsequently, it made an amended report, taking into account the Discovery of the Contracts to Sell during the year 1996 showing that the value of the property of Moldex was ₱1,600 per square meter and another in the year 1999 that shows that its value was ₱1,800 per square meter. x x x However, there was no evidence that such lands subject of the aforesaid contracts to sell is sufficiently similar to the properties subject of expropriation owned by appellant Moldex. x x x It cannot be said that all properties in this area have the same market value nor do the contracts to sell conclusive as to the fair market price of a parcel of land because it may be above its fair market value. Appellant Moldex did not present evidence showing that the lots subject of contracts to sell is similar to the lands subject of expropriation. Thus, evidence presented by appellant Moldex cannot be a basis in determining the real fair market value of the properties subject of expropriation. x x x

x x x It should be observed in the report made by the Commissioners that they made an ocular inspection of the area and they found that the property is semi-cogonal and agricultural in character and that during their inspection they noticed trace of old rice stalks that marked the surrounding [e]specially under the transmission lines of the plaintiff-appellant NPC. Since the Commissioners are disinterested persons who made the ocular inspection and report, their report is entitled to great weight.

x x x It can be clearly deduced from the report of the Commissioners that although the report was made in year 2001, they considered other facts which were reflective of the value of the subject properties even before such time. x x x they also considered the Deeds of Sale execute[d] in 1996 and they also inquired with the Office of the Provincial Assessors to aid them in arriving at the fair market value of the subject lands. x x x n (*sic*) the joint report of Commissioners' Ortega and Magdasoc, it was reflected that the value of the property ranged from ₱500.00 to ₱1,000.00 if the property is developed and improved and in the report of Commissioner Malto, from an appraisal of Cuervo Appraisers, Inc. and Asian Appraisal Co. the developed lots in the area could be valued at ₱525.00 to ₱700.00 per square meter. x x x Thus, from this [*sic*] facts, it could be clearly shown that in recommending the valuation of the subject properties, allowance was made taking into consideration the time of taking of the property subject of expropriation and the filing of complaint. x x x[56]

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[56] Citations omitted.

Based on the foregoing elucidation, the Court of Appeals affirmed the RTC's finding of the value of just compensation based on the majority report's valuation of ₱400.00 per square meter for the properties belonging to respondents with the exception of respondent Moldex. Both the Court of Appeals and the RTC were convinced that the commissioners' recommendation was arrived at after a judicious consideration of all factors. Absent any showing that said valuation is exorbitant and unjustified, the same is binding on this Court.

WHEREFORE, the instant petition for review on *certiorari* is DENIED and the Decision of the Court of Appeals in CA-G.R. CV No. 73460 is AFFIRMED. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 161057. September 12, 2008]

BETTY GABIONZA and ISABELITA TAN, *petitioners, vs.* **COURT OF APPEALS, LUKE ROXAS and EVELYN NOLASCO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— Article 315(2)(a) of the Revised Penal Code states: ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by: x x x (2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud: (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; x x x The elements of estafa by means of deceit as defined under Article 315 (2) (a) of the Revised Penal Code are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage.

2. **ID.; ID.; WHEN BORROWER IN MONEY MARKET PLACEMENT LIABLE FOR ESTAFA. —** It is possible to hold the borrower in a money market placement liable for estafa if the creditor was induced to extend a loan upon the false or fraudulent misrepresentations of the borrower. Such estafa is one by means of deceit. The borrower would not be generally liable for estafa through misappropriation if he or she fails to repay the loan, since the liability in such instance is ordinarily civil in nature.

3. **COMMERCIAL LAW; REVISED SECURITIES ACT; RULE THAT REGISTRATION OF SECURITIES REQUIRED AND SALE OF UNREGISTERED SECURITIES PROHIBITED; SCHEME TO DIVERT THE RULE WITH THE ISSUANCE OF POSTDATED CHECKS IN CASE AT BAR. —** Section 4 of Batas Pambansa Blg. 176, or the Revised Securities Act, generally requires the registration of securities and prohibits the sale or distribution of unregistered securities. The DOJ extensively concluded that private respondents are liable for violating such prohibition against the sale of unregistered securities. It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons. The Revised Securities Act was geared towards maintaining the stability of the national investment market against activities such as those apparently engaged in by ASBHI. As

the DOJ Resolution noted, ASBHI adopted this scheme in an attempt to circumvent the Revised Securities Act, which requires a prior license to sell or deal in securities. After all, if ASBHI's activities were actually regulated by the SEC, it is hardly likely that the design it chose to employ would have been permitted at all. But was ASBHI able to successfully evade the requirements under the Revised Securities Act? As found by the DOJ, there is ultimately a *prima facie* case that can at the very least sustain prosecution of private respondents under that law. The DOJ Resolution is persuasive in citing American authorities which countenance a flexible definition of securities. Moreover, it bears pointing out that the definition of "securities" set forth in Section 2 of the Revised Securities Act includes "commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another." A check is a commercial paper evidencing indebtedness of any person, financial or non-financial entity. Since the checks in this case were generally rolled over to augment the creditor's existing investment with ASBHI, they most definitely take on the attributes of traditional stocks.

4. POLITICAL LAW; LEGISLATION; ABSOLUTE REPEAL OF PENAL LAW DEPRIVES COURT TO PUNISH ONE CHARGED WITH VIOLATING OLD LAW PRIOR TO ITS REPEAL; EXCEPTION; WHERE REPEALING ACT REENACTS FORMER STATUTE AND PUNISHES THE ACT PREVIOUSLY PENALIZED UNDER THE OLD LAW. — Private respondents cannot make capital of the fact that when the DOJ Resolution was issued, the Revised Securities Act had already been repealed by the Securities Regulation Code of 2000. As noted by the DOJ, the new Code does punish the same offense alleged of petitioners, particularly Section 8 in relation to Section 73 thereof. The complained acts occurred during the effectivity of the Revised Securities Act. Certainly, the enactment of the new Code in lieu of the Revised Securities Act could not have extinguished all criminal acts committed under the old law. In 1909-1910, the Philippine and United States Supreme Courts affirmed the principle that when the repealing act reenacts substantially the former law, and does not increase the punishment of the accused, "the right still exists to punish the accused for an offense of which they were convicted and

sentenced before the passage of the later act." This doctrine was reaffirmed as recently as 2001, where the Court, through Justice Quisumbing, held in *Benedicto v. Court of Appeals* that an exception to the rule that the absolute repeal of a penal law deprives the court of authority to punish a person charged with violating the old law prior to its repeal is "where the repealing act reenacts the former statute and punishes the act previously penalized under the old law." It is worth noting that both the Revised Securities Act and the Securities Regulation Code of 2000 provide for exactly the same penalty: "a fine of not less than five thousand (₱5,000.00) pesos nor more than five hundred thousand (₱500,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty one (21) years, or both, in the discretion of the court."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PARTIES; EXCLUSION OF ONE PARTY TO THE SAME COMPLAINT DOES NOT LEAD TO DISMISSAL OF THE COMPLAINT. — Assuming that the traders could be tagged as principals by direct participation in tandem with Roxas and Nolasco — the principals by inducement — does it make sense to compel that they be jointly charged in the same complaint to the extent that the exclusion of one leads to the dismissal of the complaint? It does not. Unlike in civil cases, where indispensable parties are required to be impleaded in order to allow for complete relief once the case is adjudicated, the determination of criminal liability is individual to each of the defendants. Even if the criminal court fails to acquire jurisdiction over one or some participants to a crime, it still is able to try those accused over whom it acquired jurisdiction. The criminal court will still be able to ascertain the individual liability of those accused whom it could try, and hand down penalties based on the degree of their participation in the crime. The absence of one or some of the accused may bear impact on the available evidence for the prosecution or defense, but it does not deprive the trial court to accordingly try the case based on the evidence that is actually available.

6. POLITICAL LAW; DEPARTMENT OF JUSTICE; DETERMINATION OF PROBABLE CAUSE; UPHELD IN CASE AT BAR. — It is true that there are exceptions that may warrant departure from the general rule of non-interference with the determination of

probable cause by the DOJ, yet such exceptions do not lie in this case, and the justifications actually cited in the Court of Appeals' decision are exceptionally weak and ultimately erroneous. Worse, it too hastily condoned the apparent evasion of liability by persons who seemingly profited at the expense of investors who lost millions of pesos. The Court's conclusion is that the DOJ'S decision to prosecute private respondents is founded on sufficient probable cause, and the ultimate determination of guilt or acquittal is best made through a full trial on the merits. Indeed, many of the points raised by private respondents before this Court, related as they are to the factual context surrounding the subject transactions, deserve the full assessment and verification only a trial on the merits can accord.

VELASCO, JR., *J., dissenting opinion*:

1. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ABSENCE OF DIRECT DEALING BETWEEN THE PARTIES EFFECTIVELY NEGATES CRIMINAL RESPONSIBILITY. — There is no *prima facie* case for the crime of *estafa* under Art. 315(2)(a). As aptly put by the CA, private respondents had no direct dealing with the petitioners, thus effectively negating criminal responsibility imputed against them. For liability for *estafa* under said article to attach, it is indispensable that deceit or fraudulent misrepresentation made prior to or at least simultaneously with the delivery of the thing be employed on the offended party who parted with his property on account of such misrepresentation. This particular scenario did not occur in the instant case. It must be noted that the criminal complaints, *i.e.*, affidavit-complaints of petitioners, alleged that the fraudulent scheme was perpetrated **personally** by private respondents and through their agents. Private respondents vehemently denied this allegation. The Public Prosecutors who conducted the preliminary investigations found no direct dealing by private respondents with the petitioners.

2. ID.; ID.; NO FALSE PRETENSE; FRAUDULENT ACT OR FRAUDULENT MEANS PERPETRATED PRIOR TO OR SIMULTANEOUS WITH THE COMMISSION OF FRAUD IN CASE AT BAR. — There was no false pretense, fraudulent act or fraudulent means perpetrated by private respondents prior to or simultaneous with the commission of the fraud. The

fraudulent acts as alleged by petitioners and other complainants consisted of the following: that ASBHI was into the very same activities of ASB Realty, Corp., ASB Development Corp., and ASB Land, Inc. or otherwise held controlling interests in these corporations; that ASBHI could legitimately solicit funds from the public for investment/borrowing purposes; that ASBHI, by itself, or through the corporations aforestated, owned real and personal properties which would support and justify its borrowing program; that ASBHI was connected with, and firmly backed by, DBS Bank in which Roxas held a substantial stake; and that ASBHI would, upon maturity of its checks it had issued to its lenders, pay the same and that it had necessary resources to do so. The above enumerated acts or circumstances had been passed upon and duly scrutinized by the investigating State Prosecutors and were found unsupported by any evidence, or, at the very least, were not fraudulent. A perusal of the foregoing allegations would show that they remain to be mere allegations; they cannot and ought not to be used to support a finding of probable cause.

3. ID.; ID.; NON-INCLUSION OF ALLEGED AGENTS WHO ALLEGEDLY INVEIGLED VICTIM PARTIES TO INVEST THROUGH FRAUDULENT SCHEME, IS FATAL TO CRIMINAL COMPLAINTS.— The non-inclusion of the alleged agents of private respondents who allegedly inveigled petitioners, through the fraudulent scheme, to invest in ASB, is fatal to the criminal complaints. The *ponencia* belabored to make a distinction between criminal and civil cases, observing that each accused is personally answerable for the criminal act regardless of the inclusion of other accused or perpetrators. While there is indeed a difference between criminal and civil cases, yet the non-inclusion of the agent or agents who allegedly enticed the petitioners to part with their money is a clear *indicium* that no fraud was committed by the agents of private respondents. Proof is also absent that these alleged acts induced and perpetrated by private respondents. While the issue on whether fraudulent pretenses or misrepresentations were employed to lure the petitioners and other investors to part with their money is evidentiary, no evidence whatsoever on said issue was presented at the summary proceedings of the preliminary investigation to show **reasonable probability** of private respondents' guilt. In the instant case, there is even

no allegation as to the identity of the scheming agents who were allegedly acting under the direction of private respondents. In a criminal prosecution, the State's resources are arrayed against an accused. Be this as it may, mere theories or allegations cannot and should not be taken as sufficient to overcome the presumption of innocence. In the instant case, the mere allegation and theory of a fraudulent scheme perpetrated against petitioners by private respondents through inducement should not be and cannot be a basis either for probable cause.

4. COMMERCIAL LAW; CHECKS; NOT CONSIDERED AS SECURITIES. — Checks cannot constitute securities, much less in the case at bar. Securities under Section 2 of the Revised Securities Act (RSA) has a definite meaning, thus: (a) "Securities" shall include bonds, debentures, notes, evidences of indebtedness, shares in a company, pre-organization certificates or subscriptions, investment contracts, certificates of interest or participation in a profit sharing agreement, collateral trust certificates, equipment trust certificates (including condition sale contracts or similar interests or instruments serving the same purpose), voting trust certificates, certificates of deposit for a security, x x x or, in general, interests or instruments commonly considered to be "securities," or certificates of interest or participation in, temporary or interim certificates for, receipts for, guarantees of, or warrants or rights to subscribe to or buy or sell any of the foregoing; or commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another, with or without recourse, such as promissory notes, repurchase agreements, certificates of assignments x x x, joint venture contracts, and similar contracts and investments where there is no tangible return on investments plus profits but an appreciation of capital as well as enjoyment of particular privileges and services. From the foregoing, it is apparent that a check which is a form of a demand draft is not a security. If the legislature intended to include checks under the above definition of "securities," it could easily have done so but it did not. Besides, there is no jurisprudential authority defining and determining a check as a security. Thus, it is erroneous to conclude that a check is a security or to characterize it as a commercial instrument evidencing indebtedness.

5. REMEDIAL LAW; CRIMINAL LAW; ILL-ADVISED CRIMINAL PROSECUTION, ABHORRED. — An ill-advised criminal prosecution will only entail wasted money, resources and effort by the government and both parties aside from the public humiliation and undue suffering respondents will undergo in a needless trial, bearing in mind what this Court held in *Ledesma v. Court of Appeals* and in *Crespo v. Mogul*. The lethal repercussions of the majority opinion in the present case cannot and should not be ignored.

APPEARANCES OF COUNSEL

Macam Larcia Ulep & Borge for petitioners.
Javier Jose Mendoza and Associates for private respondents.

D E C I S I O N

TINGA, *J.*:

On 21 August 2000, petitioners Betty Go Gabionza (Gabionza) and Isabelita Tan (Tan) filed their respective Complaints-affidavit[1] charging private respondents Luke Roxas (Roxas) and Evelyn Nolasco (Nolasco) with several criminal acts. Roxas was the president of ASB Holdings, Inc. (ASBHI) while Nolasco was the senior vice president and treasurer of the same corporation.

According to petitioners, ASBHI was incorporated in 1996 with its declared primary purpose to invest in any and all real and personal properties of every kind or otherwise acquire the stocks, bonds, and other securities or evidence of indebtedness of any other corporation, and to hold or own, use, sell, deal in, dispose of, and turn to account any such stocks.[2] ASBHI was organized with an authorized capital stock of ₱500,000.00, a fact reflected in the corporation's articles of incorporation, copies of which were appended as annexes to the complaint.[3]

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[1] See *rollo*, pp. 466-558.

[2] *Id.* at 466, 515.

[3] *Id.*

Both petitioners had previously placed monetary investment with the Bank of Southeast Asia (BSA). They alleged that between 1996 and 1997, they were convinced by the officers of ASBHI to lend or deposit money with the corporation. They and other investors were urged to lend, invest or deposit money with ASBHI, and in return they would receive checks from ASBHI for the amount so lent, invested or deposited. At first, they were issued receipts reflecting the name "ASB Realty Development" which they were told was the same entity as BSA or was connected therewith, but beginning in March 1998, the receipts were issued in the name of ASBHI. They claimed that they were told that ASBHI was exactly the same institution that they had previously dealt with.[4]

ASBHI would issue two (2) postdated checks to its lenders, one representing the principal amount and the other covering the interest thereon. The checks were drawn against DBS Bank and would mature in 30 to 45 days. On the maturity of the checks, the individual lenders would renew the loans, either collecting only the interest earnings or rolling over the same with the principal amounts.[5]

In the first quarter of 2000, DBS Bank started to refuse to pay for the checks purportedly by virtue of "stop payment" orders from ASBHI. In May of 2000, ASBHI filed a petition for rehabilitation and receivership with the Securities and Exchange Commission (SEC), and it was able to obtain an order enjoining it from paying its outstanding liabilities.[6] This series of events led to the filing of the complaints by petitioners, together with Christine Chua, Elizabeth Chan, Ando Sy and Antonio Villareal, against ASBHI.[7] The complaints were for estafa under Article 315(2)(a) and (2)(d) of the Revised Penal Code, estafa under Presidential Decree No. 1689, violation of the Revised Securities Act and violation of the General Banking Act.

[4] *Id.* at 467-468, 516-517.

[5] *Id.* at 83.

[6] *Id.* See also *MBTC v. ASB Holdings, Inc., et.al*, G.R. No. 166197, 27 Feburary 2007.

[7] *Id.*

A special task force, the Task Force on Financial Fraud (Task Force), was created by the Department of Justice (DOJ) to investigate the several complaints that were lodged in relation to ASBHI.[8] The Task Force, dismissed the complaint on 19 October 2000, and the dismissal was concurred in by the assistant chief state prosecutor and approved by the chief state prosecutor.[9] Petitioners filed a motion for reconsideration but this was denied in February 2001.[10] With respect to the charges of estafa under Article 315(2) of the Revised Penal Code and of violation of the Revised Securities Act (which form the crux of the issues before this Court), the Task Force concluded that the subject transactions were loans which gave rise only to civil liability; that petitioners were satisfied with the arrangement from 1996 to 2000; that petitioners never directly dealt with Nolasco and Roxas; and that a check was not a security as contemplated by the Revised Securities Act.

Petitioners then filed a joint petition for review with the Secretary of Justice. On 15 October 2001, then Secretary Hernando Perez issued a resolution which partially reversed the Task Force and instead directed the filing of five (5) Informations for estafa under Article 315(2)(a) of the Revised Penal Code on the complaints of Chan and petitioners Gabionza and Tan, and an Information for violation of Section 4 in relation to Section 56 of the Revised Securities Act.[11] Motions for reconsideration to this Resolution were denied by the Department of Justice in a Resolution dated 3 July 2002.[12]

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[8] *Id.* at 22.

[9] Through a Joint-Resolution dated 19 October 2000. See *rollo*, pp. 96-106.

[10] *Rollo*, pp. 108-110.

[11] *Id.* at 81-88.

[12] *Id.* at 89-92. In said Resolution, the DOJ also directed that two additional informations for estafa under Article 315(2)(a) be filed corresponding to the complaints filed by Ando Sy and Antonio Villareal, whose names "were inadvertently omitted in the dispositive portion of [the DOJ] resolution of October 15, 2001." *Id.*, at 91.

Even as the Informations were filed before the Regional Trial Court of Makati City, private respondents assailed the DOJ Resolution by way of a *certiorari* petition with the Court of Appeals. In its assailed Decision[13] dated 18 July 2003, the Court of Appeals reversed the DOJ and ordered the dismissal of the criminal cases. The dismissal was sustained by the appellate court when it denied petitioners' motion for reconsideration in a Resolution dated 28 November 2003.[14] Hence this petition filed by Gabionza and Tan.

The Court of Appeals deviated from the general rule that accords respect to the discretion of the DOJ in the determination of probable cause. This Court consistently adheres to its policy of non-interference in the conduct of preliminary investigations, and to leave to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the filing of an information against a supposed offender.[15]

At the outset, it is critical to set forth the key factual findings of the DOJ which led to the conclusion that probable cause existed against the respondents. The DOJ Resolution states, to wit:

> The transactions in question appear to be mere renewals of the loans the complainant-petitioners earlier granted to BSA. However, just after they agreed to renew the loans, the ASB agents who dealt with them issued to them receipts indicating that the borrower was ASB Realty, with the representation that it was "the same entity as BSA or connected therewith." On the strength of this representation, along with other claims relating to the status of ASB and its supposed financial capacity to meet obligations, the complainant-petitioners acceded to lend the funds to ASB Realty instead. As it turned out, however, ASB had in fact no financial capacity to repay the loans as it had an authorized capital stock of only ₱500,000.00 and paid up

[13] *Id.* at 52-62. Penned by Associate Justice R. De Guia-Salvador, concurred in by Associate Justice Marina L. Buzon and Jose C. Mendoza of the Court of Appeals Special Fifteenth Division.

[14] *Id.* at 76-77.

[15] *Andres v. Cuevas*, G.R. No. 150869, 9 June 2005, 460 SCRA 38, 52.

capital of only ₱125,000.00. Clearly, the representations regarding its supposed financial capacity to meet its obligations to the complainant-petitioners were simply false. Had they known that ASB had in fact no such financial capacity, they would not have invested millions of pesos. Indeed, no person in his proper frame of mind would venture to lend millions of pesos to a business entity having such a meager capitalization. The fact that the complainant-petitioners might have benefited from its earlier dealings with ASB, through interest earnings on their previous loans, is of no moment, it appearing that they were not aware of the fraud at those times they renewed the loans.

The false representations made by the ASB agents who dealt with the complainant-petitioners and who inveigled them into investing their funds in ASB are properly imputable to respondents Roxas and Nolasco, because they, as ASB's president and senior vice president/treasurer, respectively, in charge of its operations, directed its agents to make the false representations to the public, including the complainant-petitioners, in order to convince them to invest their moneys in ASB. It is difficult to make a different conclusion, judging from the fact that respondents Roxas and Nolasco authorized and accepted for ASB the fraud-induced loans. This makes them liable for estafa under Article 315 (paragraph 2 [a]) of the Revised Penal Code. They cannot escape criminal liability on the ground that they did not personally deal with the complainant-petitioners in regard to the transactions in question. Suffice it to state that to commit a crime, inducement is as sufficient and effective as direct participation.[16]

Notably, neither the Court of Appeals' decision nor the dissent raises any serious disputation as to the occurrence of the facts as narrated in the above passage. They take issue instead with the proposition that such facts should result in a *prima facie* case against either Roxas or Nolasco, especially given that neither of them engaged in any face-to-face dealings with petitioners. Leaving aside for the moment whether this assumed remoteness of private respondents sufficiently insulates them from criminal liability, let us first discern whether the above-stated findings do establish a *prima facie* case that petitioners were indeed the victims of the crimes of estafa under Article 315(2)(a) of the

[16] *Rollo,* pp. 85-86.

Revised Penal Code and of violation of the Revised Securities Act.

Article 315(2)(a) of the Revised Penal Code states:

> ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
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> 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 simultaneous with the commission of the fraud:
>
> (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;
>
> x x x x x x x x x

The elements of estafa by means of deceit as defined under Article 315(2)(a) of the Revised Penal Code are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage.[17]

Do the findings embodied in the DOJ Resolution align with the foregoing elements of estafa by means of deceit?

First. The DOJ Resolution explicitly identified the false pretense, fraudulent act or fraudulent means perpetrated upon the petitioners. It narrated that petitioners were made to believe that ASBHI had the financial capacity to repay the loans it

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[17] *Aricheta v. People*, G.R. No. 172500, 21 September 2007; citing *Cosme Jr. v. People*, G.R. No. 149753, 27 November 2006, 508 SCRA 190, 203-204.

enticed petitioners to extend, despite the fact that "it had an authorized capital stock of only ₱500,000.00 and paid up capital of only ₱125,000.00."[18] The deficient capitalization of ASBHI is evinced by its articles of incorporation, the treasurer's affidavit executed by Nolasco, the audited financial statements of the corporation for 1998 and the general information sheets for 1998 and 1999, all of which petitioners attached to their respective affidavits.[19]

The Court of Appeals conceded the fact of insufficient capitalization, yet discounted its impact by noting that ASBHI was able to make good its loans or borrowings from 1998 until the first quarter of 2000.[20] The short-lived ability of ASBHI, to repay its loans does not negate the fraudulent misrepresentation or inducement it has undertaken to obtain the loans in the first place. The material question is not whether ASBHI inspired exculpatory confidence in its investors by making good on its loans for a while, but whether such investors would have extended the loans in the first place had they known its true financial setup. The DOJ reasonably noted that "no person in his proper frame of mind would venture to lend millions of pesos to a business entity having such a meager capitalization." In estafa under Article 315(2)(a), it is essential that such false statement or false representation constitute the very cause or the only motive which induces the complainant to part with the thing.[21]

Private respondents argue before this Court that the true capitalization of ASBHI has always been a matter of public record, reflected as it is in several documents which could be obtained by the petitioners from the SEC.[22] We are not convinced. The material misrepresentations have been made by the agents or employees of ASBHI to petitioners, to the effect that the

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[18] *Rollo*, p. 85.

[19] See *e.g.*, *id.* at 480-501.

[20] *Id.* at 60-61.

[21] L. REYES, *II The Revised Criminal Code* (2001 ed.) at 767; citing *People v. Gines, et al.* C.A., 61 O.G. 1365.

[22] *Rollo*, pp. 332-333.

corporation was structurally sound and financially able to undertake the series of loan transactions that it induced petitioners to enter into. Even if ASBHI's lack of financial and structural integrity is verifiable from the articles of incorporation or other publicly available SEC records, it does not follow that the crime of estafa through deceit would be beyond commission when precisely there are binding representations that the company would be able to meet its obligations. Moreover, respondents' argument assumes that there is legal obligation on the part of petitioners to undertake an investigation of ASBHI before agreeing to provide the loans. There is no such obligation. It is unfair to expect a person to procure every available public record concerning an applicant for credit to satisfy himself of the latter's financial standing. At least, that is not the way an average person takes care of his concerns.

Second. The DOJ Resolution also made it clear that the false representations have been made to petitioners prior to or simultaneously with the commission of the fraud. The assurance given to them by ASBHI that it is a worthy credit partner occurred before they parted with their money. Relevantly, ASBHI is not the entity with whom petitioners initially transacted with, and they averred that they had to be convinced with such representations that Roxas and the same group behind BSA were also involved with ASBHI.

Third. As earlier stated, there was an explicit and reasonable conclusion drawn by the DOJ that it was the representation of ASBHI to petitioners that it was creditworthy and financially capable to pay that induced petitioners to extend the loans. Petitioners, in their respective complaint-affidavits, alleged that they were enticed to extend the loans upon the following representations: that ASBHI was into the very same activities of ASB Realty Corp., ASB Development Corp. and ASB Land, Inc., or otherwise held controlling interest therein; that ASB could legitimately solicit funds from the public for investment/ borrowing purposes; that ASB, by itself, or through the corporations aforestated, owned real and personal properties which would support and justify its borrowing program; that

ASB was connected with and firmly backed by DBS Bank in which Roxas held a substantial stake; and ASB would, upon maturity of the checks it issued to its lenders, pay the same and that it had the necessary resources to do so.[23]

Fourth. The DOJ Resolution established that petitioners sustained damage as a result of the acts perpetrated against them. The damage is considerable as to petitioners. Gabionza lost ₱12,160,583.32 whereas Tan lost 16,411,238.57.[24] In addition, the DOJ Resolution noted that neither Roxas nor Nolasco disputed that ASBHI had borrowed funds from about 700 individual investors amounting to close to ₱4B.[25]

To the benefit of private respondents, the Court of Appeals ruled, citing *Sesbreno v. Court of Appeals*,[26] that the subject transactions "are akin to money market placements which partake the nature of a loan, the non-payment of which does not give rise to criminal liability for estafa." The citation is woefully misplaced. *Sesbreno* affirmed that "a money market transaction partakes the nature of a loan and therefore 'nonpayment thereof would not give rise to criminal liability for estafa through misappropriation or conversion.'"[27] **Estafa through misappropriation or conversion is punishable under Article 315(1)(b), while the case at bar involves Article 315 (2)(a), a mode of estafa by means of deceit.** Indeed, *Sesbreno* explains: "In money market placement, the investor is a lender who loans his money to a borrower through a middleman or dealer. Petitioner here loaned his money to a borrower through Philfinance. When the latter failed to deliver back petitioner's placement with the corresponding interest earned at the maturity date, the liability incurred by Philfinance was a civil one."[28] That rationale is wholly irrelevant to the complaint at bar, which centers not on the inability of ASBHI to repay petitioners but on the fraud

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[23] See *id.* at 467, 516.

[24] *Id.* at 84.

[25] *Id.* at 86.

[26] 310 Phil. 671 (1995).

[27] *Id.* at 681.

[28] *Id.* at 682.

and misrepresentation committed by ASBHI to induce petitioners to part with their money.

To be clear, it is possible to hold the borrower in a money market placement liable for estafa if the creditor was induced to extend a loan upon the false or fraudulent misrepresentations of the borrower. Such estafa is one by means of deceit. The borrower would not be generally liable for estafa through misappropriation if he or she fails to repay the loan, since the liability in such instance is ordinarily civil in nature.

We can thus conclude that the DOJ Resolution clearly supports a *prima facie* finding that the crime of estafa under Article 315 (2)(a) has been committed against petitioners. Does it also establish a *prima facie* finding that there has been a violation of the then Revised Securities Act, specifically Section 4 in relation to Section 56 thereof?

Section 4 of Batas Pambansa Blg. 176, or the Revised Securities Act, generally requires the registration of securities and prohibits the sale or distribution of unregistered securities.[29] The DOJ

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[29] The provision reads in full:

SECTION 4. Requirement of registration of securities. — (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippine unless such securities shall have been registered and permitted to be sold as hereinafter provided.

(b) Notwithstanding the provisions of paragraph (a) of this Section and the succeeding Sections regarding exemptions, no commercial paper as defined in Section two hereof shall be issued, endorsed, sold, transferred or in any other manner conveyed to the public, unless registered in accordance with the rules and regulations that shall be promulgated in the public interest and for the protection of investors by the Commission. The Commission, however, with due regard to the public interest and the protection of investors, may, by rules and regulations, exempt from registration any commercial paper that may otherwise be covered by this paragraph. In either case, the rules and regulations promulgated by the Commission shall be subject to the approval of the Monetary Board of the Central Bank of the Philippines. The Monetary Board shall, however, have the power to promulgate its own rules on the monetary and credit aspects of commercial paper issues, which may include the imposition of ceilings on issues by any single borrower, and the authority

extensively concluded that private respondents are liable for violating such prohibition against the sale of unregistered securities:

Respondents Roxas and Nolasco do not dispute that in 1998, ASB borrowed funds about 700 individual investors amounting to close to ₱4 billion, on recurring, short-term basis, usually 30 or 45 days, promising high interest yields, issuing therefore mere postdate checks. Under the circumstances, the checks assumed the character of "evidences of indebtedness," which are among the "securities" mentioned under the Revised Securities Act. The term "securities" embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits (69 Am Jur 2d, p. 604). Thus, it has been held that checks of a debtor received and held by the lender also are evidences of indebtedness and therefore "securities" under the Act, where the debtor agreed to pay interest on a monthly basis so long as the principal checks remained uncashed, it being said that such principal extent as would have promissory notes payable on demand (*Id.*, p. 606, citing *United States v. Attaway* (DC La) 211 F Supp 682). In the instant case, the checks were issued by ASB in lieu of the securities enumerated under the Revised Securities Act in a clever attempt, or so they thought, to take the case out of the purview of the law, which requires prior license to sell or deal in securities and registration thereof. The scheme was to (sic) designed to circumvent the law. Checks constitute mere substitutes for cash if so issued in payment of obligations in the ordinary course of business transactions. But when they are issued in exchange for a big number of individual non-personalized loans solicited from the public, numbering about 700 in this case, the checks cease to be such. In such a circumstance, the checks assume the character of evidences of indebtedness. This is especially so where the individual loans were not evidenced by appropriate debt instruments, such as promissory notes, loan

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to supervise the enforcement of such rules and to require issues of commercial papers to submit their financial statements and such periodic reports as may be necessary for such enforcement. As far as practicable, such financial statements and periodic reports, when required by both the Commission and the Monetary Board, shall be uniform.

(c) A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to the public inspection at reasonable hours on business days.

agreements, *etc*., as in this case. Purportedly, the postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme, whereby companies without prior license or authority from the SEC. This cannot be countenanced. The subsequent repeal of the Revised Securities Act does not spare respondents Roxas and Nolasco from prosecution thereunder, since the repealing law, Republic Act No. 8799 known as the "Securities Regulation Code," continues to punish the same offense (see Section 8 in relation to Section 73, R.A. No. 8799).[30]

The Court of Appeals however ruled that the postdated checks issued by ASBHI did not constitute a security under the Revised Securities Act. To support this conclusion, it cited the general definition of a check as "a bill of exchange drawn on a bank and payable on demand," and took cognizance of the fact that "the issuance of checks for the purpose of securing a loan to finance the activities of the corporation is well within the ambit of a valid corporate act" to note that a corporation does not need prior registration with the SEC in order to be able to issue a check, which is a corporate prerogative.

This analysis is highly myopic and ignorant of the bigger picture. It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons. The Revised Securities Act was geared towards maintaining the stability of the national investment market against activities such as those apparently engaged in by ASBHI. As the DOJ Resolution noted, ASBHI adopted this scheme in an attempt to circumvent the Revised Securities Act, which requires a prior license to sell or deal in securities. After all, if ASBHI's activities were actually regulated by the SEC, it is hardly likely that the design it chose to employ would have been permitted at all.

But was ASBHI able to successfully evade the requirements under the Revised Securities Act? As found by the DOJ, there

[30] *Rollo*, pp. 86-87.

is ultimately a *prima facie* case that can at the very least sustain prosecution of private respondents under that law. The DOJ Resolution is persuasive in citing American authorities which countenance a flexible definition of securities. Moreover, it bears pointing out that the definition of "securities" set forth in Section 2 of the Revised Securities Act includes "commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another."[31] A check is a commercial paper evidencing indebtedness of any person, financial or non-financial entity. Since the checks in this case were generally rolled over to augment the creditor's existing investment with ASBHI, they most definitely take on the attributes of traditional stocks.

We should be clear that the question of whether the subject checks fall within the classification of securities under the Revised Securities Act may still be the subject of debate, but at the very least, the DOJ Resolution has established a *prima facie* case for prosecuting private respondents for such offense. The thorough determination of such issue is best left to a full-blown trial of the merits, where private respondents are free to dispute the theories set forth in the DOJ Resolution. It is clear error on the part of the Court of Appeals to dismiss such finding so perfunctorily and on such flimsy grounds that do not consider the grave consequences. After all, as the DOJ Resolution correctly pointed out: "[T]he postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme, whereby companies without prior license or authority from the SEC. This cannot be countenanced."[32]

This conclusion quells the stance of the Court of Appeals that the unfortunate events befalling petitioners were ultimately benign, not malevolent, a consequence of the economic crisis that beset the Philippines during that era.[33] That conclusion

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[31] See Section 2, Revised Securities Act.

[32] *Rollo*, p. 87.

[33] *Id.* at 61.

would be agreeable only if it were undisputed that the activities of ASBHI are legal in the first place, but the DOJ puts forth a legitimate theory that the entire *modus operandi* of ASBHI is illegal under the Revised Securities Act and if that were so, the impact of the Asian economic crisis would not obviate the criminal liability of private respondents.

Private respondents cannot make capital of the fact that when the DOJ Resolution was issued, the Revised Securities Act had already been repealed by the Securities Regulation Code of 2000.[34] As noted by the DOJ, the new Code does punish the same offense alleged of petitioners, particularly Section 8 in relation to Section 73 thereof. The complained acts occurred during the effectivity of the Revised Securities Act. Certainly, the enactment of the new Code in lieu of the Revised Securities Act could not have extinguished all criminal acts committed under the old law.

In 1909-1910, the Philippine and United States Supreme Courts affirmed the principle that when the repealing act reenacts substantially the former law, and does not increase the punishment of the accused, "the right still exists to punish the accused for an offense of which they were convicted and sentenced before the passage of the later act."[35] This doctrine was reaffirmed as recently as 2001, where the Court, through Justice Quisumbing, held in *Benedicto v. Court of Appeals*[36] that an exception to the rule that the absolute repeal of a penal law deprives the court of authority to punish a person charged with violating the old law prior to its repeal is "where the repealing act reenacts the former statute and punishes the act previously penalized under the old law."[37] It is worth noting that both the Revised Securities Act and the Securities Regulation Code of 2000 provide for exactly the same penalty: "a fine of not less than five thousand (₱5,000.00) pesos nor more than five hundred thousand

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[34] Dissenting Opinion, *infra*.

[35] *Ong Chang Wing v. U.S.*, 40 Phil. 1046, 1050 (1910).

[36] 416 Phil. 722 (2001).

[37] *Id.* at 744.

(₱500,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty one (21) years, or both, in the discretion of the court."[38]

It is ineluctable that the DOJ Resolution established a *prima facie* case for violation of Article 315 (2)(a) of the Revised Penal Code and Sections 4 in relation to 56 of the Revised Securities Act. We now turn to the critical question of whether the same charges can be pinned against Roxas and Nolasco likewise.

The DOJ Resolution did not consider it exculpatory that Roxas and Nolasco had not themselves dealt directly with petitioners, observing that "to commit a crime, inducement is as sufficient and effective as direct participation."[39] This conclusion finds textual support in Article 17[40] of the Revised Penal Code. The Court of Appeals was unable to point to any definitive evidence that Roxas or Nolasco did not instruct or induce the agents of ASBHI to make the false or misleading representations to the investors, including petitioners. Instead, it sought to acquit Roxas and Nolasco of any liability on the ground that the traders or employees of ASBHI who directly made the dubious representations to petitioners were never identified or impleaded as respondents.

It appears that the Court of Appeals was, without saying so, applying the rule in civil cases that all indispensable parties must be impleaded in a civil action.[41] There is no equivalent rule in criminal procedure, and certainly the Court of Appeals' decision failed to cite any statute, procedural rule or jurisprudence

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[38] See Section 56, Revised Securities Act and Section 73, Securities Regulation Code.

[39] *Rollo*, p. 86.

[40] Principals. – The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[41] See 1997 RULES OF CIVIL PROCEDURE, Rule 3, Sec. 7.

to support its position that the failure to implead the traders who directly dealt with petitioners is indeed fatal to the complaint.[42]

Assuming that the traders could be tagged as principals by direct participation in tandem with Roxas and Nolasco – the principals by inducement – does it make sense to compel that they be jointly charged in the same complaint to the extent that the exclusion of one leads to the dismissal of the complaint? It does not. Unlike in civil cases, where indispensable parties are required to be impleaded in order to allow for complete relief once the case is adjudicated, the determination of criminal liability is individual to each of the defendants. Even if the criminal court fails to acquire jurisdiction over one or some participants to a crime, it still is able to try those accused over whom it acquired jurisdiction. The criminal court will still be able to ascertain the individual liability of those accused whom it could try, and hand down penalties based on the degree of their participation in the crime. The absence of one or some of the accused may bear impact on the available evidence for the prosecution or defense, but it does not deprive the trial court to accordingly try the case based on the evidence that is actually available.

At bar, if it is established after trial that Roxas and Nolasco instructed all the employees, agents and traders of ASBHI to represent the corporation as financially able to engage in the challenged transactions and repay its investors, despite their knowledge that ASBHI was not established to be in a position to do so, and that representatives of ASBHI accordingly made such representations to petitioners, then private respondents could be held liable for estafa. The failure to implead or try the employees, agents or traders will not negate such potential criminal liability of Roxas and Nolasco. It is possible that the non-participation of such traders or agents in the trial will affect the ability of both petitioners and private respondents to adduce evidence during the trial, but it cannot quell the existence of the crime even before trial is had. At the very least, the non-

[42] See *rollo*, p. 60.

identification or non-impleading of such traders or agents cannot negatively impact the finding of probable cause.

The assailed ruling unfortunately creates a wide loophole, especially in this age of call centers, that would create a nearly fool-proof scheme whereby well-organized criminally-minded enterprises can evade prosecution for criminal fraud. Behind the veil of the anonymous call center agent, such enterprises could induce the investing public to invest in fictional or incapacitated corporations with fraudulent impossible promises of definite returns on investment. The rule, as set forth by the Court of Appeals' ruling, will allow the masterminds and profiteers from the scheme to take the money and run without fear of the law simply because the defrauded investor would be hard-pressed to identify the anonymous call center agents who, reading aloud the script prepared for them in mellifluous tones, directly enticed the investor to part with his or her money.

Is there sufficient basis then to establish probable cause against Roxas and Nolasco? Taking into account the relative remoteness of private respondents to petitioners, the DOJ still concluded that there was. To repeat:

> The false representations made by the ASB agents who dealt with the complainant-petitioners and who inveigled them into investing their funds in ASB are properly imputable to respondents Roxas and Nolasco, because they, as ASB's president and senior vice president/treasurer, respectively, respectively, in charge of its operations, directed its agents to make the false representations to the public, including the complainant-petitioners, in order to convince them to invest their moneys in ASB. It is difficult to make a different conclusion, judging from the fact that respondents Roxas and Nolasco authorized and accepted for ASB the fraud-induced loans.[43]

Indeed, the facts as thus established cannot lead to a definite, exculpatory conclusion that Roxas and Nolasco did not instruct, much less forbid, their agents from making the misrepresentations to petitioners. They could of course pose that defense, but such claim can only be established following a trial on the merits

[43] *Id.* at 86.

considering that nothing in the record proves without doubt such law-abiding prudence on their part. There is also the fact that ABSHI, their corporation, actually received the alleged amounts of money from petitioners. It is especially curious that according to the ASBHI balance sheets dated 31 December 1999, which petitioners attached to their affidavit-complaints,[44] over five billion pesos were booked as "advances to stockholder" when, **according to the general information sheet for 1999, Roxas owned 124,996 of the 125,000 subscribed shares of ASBHI.**[45] **Considering that ASBHI had an authorized capital stock of only ₱500,000 and a subscribed capital of ₱125,000, it can be reasonably deduced that such large amounts booked as "advances to stockholder" could have only come from the loans extended by over 700 investors to ASBHI.**

It is true that there are exceptions that may warrant departure from the general rule of non-interference with the determination of probable cause by the DOJ, yet such exceptions do not lie in this case, and the justifications actually cited in the Court of Appeals' decision are exceptionally weak and ultimately erroneous. Worse, it too hastily condoned the apparent evasion of liability by persons who seemingly profited at the expense of investors who lost millions of pesos. The Court's conclusion is that the DOJ'S decision to prosecute private respondents is founded on sufficient probable cause, and the ultimate determination of guilt or acquittal is best made through a full trial on the merits. Indeed, many of the points raised by private respondents before this Court, related as they are to the factual context surrounding the subject transactions, deserve the full assessment and verification only a trial on the merits can accord.

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals dated 18 July 2003 and 28 November 2003 are REVERSED and SET ASIDE. The Resolutions of the Department of Justice in I.S. Nos. 2000-1418 to 1422 dated 15 October 2001 and 3 July 2002 are REINSTATED. Costs against private respondents.

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[44] *Id.* at 479, 525.

[45] See *id.* at 496, 540.

SO ORDERED.

Quisumbing ((Chairperson), Carpio Morales, and *Brion, JJ.,* concur.

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

With all due respect, I dissent. The majority opinion, I respectfully submit, would be setting a **highly dangerous precedent** if it were to rule that there is a *prima facie* case for *estafa* under Article 315(2)(a) of the Revised Penal Code despite the undisputed fact that petitioners never directly dealt with private respondents, much less did the latter induce them to invest their money in their corporation, and without further proof or evidence presented for the alleged fraudulent scheme. Moreover, to hold that checks, as commercial instruments, when issued evidencing indebtedness to many persons, take the attributes of traditional stocks, *i.e.*, they become "securities" under the then *Revised Securities Act* (RSA) which requires prior registration, is equally questionable; for the issuance and usage of checks in the normal course of business, even if they are for payment of an existing debt and issued post-dated, certainly do not need registration.

No Factual and Legal Basis of Probable Cause for *Estafa*

The undersigned finds no factual nor legal basis for a finding of probable cause for *estafa* for the following reasons:

First. Persuasive is the finding of the State Prosecutors who conducted the preliminary investigations of seven criminal complaints filed by petitioners and other investors of ASB Holdings, Inc. (ASBHI) against private respondents. The State Prosecutors found lack of probable cause to hale private respondents to court for the crimes alleged by petitioners. This finding has been affirmed by the Court of Appeals (CA) through the assailed decision setting aside the Resolution of the Secretary of Justice.

In gist, the State Prosecutors are one in concluding the absence of the key element of deceit imputable against private respondents; that ASBHI was not formed for illegal purposes; that the checks issued by ASBHI are not "securities" within the ambit of the law requiring Securities and Exchange Commission (SEC) registration of securities offered for sale to the public; that the short term loans extended by the individual investors in general and by the petitioners in particular created mere civil obligations; that there is no showing that ASBHI was engaged in quasi-banking activities; and that there is no scintilla of evidence tending to show that respondent Roxas misappropriated the money lent by the individual investors.

Second. It is likewise clear that there is no *prima facie* case for the crime of *estafa* under Art. 315(2)(a). As aptly put by the CA, private respondents had no direct dealing with the petitioners, thus effectively negating criminal responsibility imputed against them. For liability for *estafa* under said article to attach, it is indispensable that deceit or fraudulent misrepresentation made prior to or at least simultaneously with the delivery of the thing be employed on the offended party who parted with his property on account of such misrepresentation. This particular scenario did not occur in the instant case.

It must be noted that the criminal complaints, *i.e.*, affidavit-complaints of petitioners, alleged that the fraudulent scheme was perpetrated **personally** by private respondents and through their agents. Private respondents vehemently denied this allegation. The Public Prosecutors who conducted the preliminary investigations found no direct dealing by private respondents with the petitioners.

Third. There was no false pretense, fraudulent act or fraudulent means perpetrated by private respondents prior to or simultaneous with the commission of the fraud. The fraudulent acts as alleged by petitioners and other complainants consisted of the following: that ASBHI was into the very same activities of ASB Realty, Corp., ASB Development Corp., and ASB Land, Inc. or otherwise held controlling interests in these corporations; that ASBHI could legitimately solicit funds from the public for investment/borrowing

purposes; that ASBHI, by itself, or through the corporations aforestated, owned real and personal properties which would support and justify its borrowing program; that ASBHI was connected with, and firmly backed by, DBS Bank in which Roxas held a substantial stake; and that ASBHI would, upon maturity of its checks it had issued to its lenders, pay the same and that it had necessary resources to do so.

The above enumerated acts or circumstances had been passed upon and duly scrutinized by the investigating State Prosecutors and were found unsupported by any evidence, or, at the very least, were not fraudulent. A perusal of the foregoing allegations would show that they remain to be mere allegations; they cannot and ought not to be used to support a finding of probable cause.

Fourth. The non-inclusion of the alleged agents of private respondents who allegedly inveigled petitioners, through the fraudulent scheme, to invest in ASB, is fatal to the criminal complaints. The *ponencia* belabored to make a distinction between criminal and civil cases, observing that each accused is personally answerable for the criminal act regardless of the inclusion of other accused or perpetrators. While there is indeed a difference between criminal and civil cases, yet the non-inclusion of the agent or agents who allegedly enticed the petitioners to part with their money is a clear *indicium* that no fraud was committed by the agents of private respondents. Proof is also absent that these alleged acts were induced and perpetrated by private respondents.

While the issue on whether fraudulent pretenses or misrepresentations were employed to lure the petitioners and other investors to part with their money is evidentiary, no evidence whatsoever on said issue was presented at the summary proceedings of the preliminary investigation to show **reasonable probability** of private respondents' guilt. In the instant case, there is even no allegation as to the identity of the scheming agents who were allegedly acting under the direction of private respondents.

In a criminal prosecution, the State's resources are arrayed against an accused. Be this as it may, mere theories or allegations cannot and should not be taken as sufficient to overcome the

presumption of innocence. In the instant case, the mere allegation and theory of a fraudulent scheme perpetrated against petitioners by private respondents through inducement should not be and cannot be a basis either for probable cause.

Fifth. Considering that ASBHI forms part of the ASB Group of Companies, its alleged undercapitalization is of no moment insofar as the advisability of petitioners' investing thereat is concerned. Evidently, ASBHI was taking loans from banks and investments from individual investors to finance the various real estate projects of the ASB Group of Companies. Before suffering business reverses, the ASB Group of Companies made good its commitment in terms of returns of the investments and paying its loan obligation to banks and other lending institutions.

As aptly found by the State Prosecutors, ASBHI was not formed for illegal purposes and that the short term loans extended by the individual investors in general and by the petitioners in particular were civil obligations but certainly not criminal in nature.

Check Not a Security

The majority agrees with the finding by the Secretary of Justice that the checks issued by ASBHI partake of the nature of "securities" under the RSA. With due respect, such a contention is erroneous. The theory that the checks issued by ASBHI to the general public, *i.e.*, 700 individual investors, evidencing indebtedness, take the attributes of traditional stocks since they were generally rolled-over to augment the individual creditors' existing investment with ASBHI, has no legal basis and much less constitute a *prima facie* case for prosecuting private respondents for violation of the RSA.

First, checks cannot constitute securities, much less in the case at bar. Securities under Section 2 of the RSA has a definite meaning, thus:

(a) "Securities" shall include bonds, debentures, notes, evidences of indebtedness, shares in a company, pre-organization certificates

or subscriptions, investment contracts, certificates of interest or participation in a profit sharing agreement, collateral trust certificates, equipment trust certificates (including condition sale contracts or similar interests or instruments serving the same purpose), voting trust certificates, certificates of deposit for a security, x x x or, in general, interests or instruments commonly considered to be "securities", or certificates of interest or participation in, temporary or interim certificates for, receipts for, guarantees of, or warrants or rights to subscribe to or buy or sell any of the foregoing; or commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another, with or without recourse, such as promissory notes, repurchase agreements, certificates of assignments x x x, joint venture contracts, and similar contracts and investments where there is no tangible return on investments plus profits but an appreciation of capital as well as enjoyment of particular privileges and services.

From the foregoing, it is apparent that a check which is a form of a demand draft is not a security. If the legislature intended to include checks under the above definition of "securities," it could easily have done so but it did not. Besides, there is no jurisprudential authority defining and determining a check as a security. Thus, it is erroneous to conclude that a check is a security or to characterize it as a commercial instrument evidencing indebtedness.

Second, it is undisputed that the checks issued to petitioners were for the payment of their principal investment and interests thereof. The checks were not intended to be or to constitute promissory notes or to evidence indebtedness. They were issued to pay petitioners what ASBHI owed them. The individual investors were free to encash or deposit the checks, at their preference, either both for their principal investment and interest or only for the interest.

Third, the investments of the individual investors, either both principal and accrued interest or the principal alone, are what are commonly called in financial and business parlance as "rolled-over." The checks issued for the payment of their principal investment and the interest thereof are not "rolled-over," as

mistakenly asserted by the majority Decision. In case the investors rolled-over their investments, *i.e.*, the individual investors plow back their principal investment and/or interest, they surrender their matured checks and new post-dated checks representing their new principal investment—if their earned or accrued interests were likewise rolled-over—and the interest due at the end of the 30- or 45-day agreed term.

Fourth, the issuance by and the eventual inability of ASBHI to pay the maturing checks cannot constitute a *prima facie* case for violation of the RSA or the *Securities Regulation Code of 2000*, for it would open the floodgates for undue prosecution under either law by payees of bouncing checks. The American jurisprudence cited by the Secretary of Justice giving a more flexible interpretation of a check to bring it within the purview of being a security is misplaced in the instant case. By no stretch of imagination can a check constitute a security that can be traded, and thus the necessity for its registration. A check is a check, a means of payment used in business in lieu of money for convenience in business transactions. It cannot be traded like securities.

Finally, the *ponencia* made much of the theories set forth in the resolution of the Secretary of Justice which, I believe, are clearly without factual or legal basis. They remain to be theories, no more, no less.

In fine, an ill-advised criminal prosecution will only entail wasted money, resources and effort by the government and both parties aside from the public humiliation and undue suffering respondents will undergo in a needless trial, bearing in mind what this Court held in *Ledesma v. Court of Appeals*[1] and in

[1] G.R. No. 113216, September 5, 1997, 278 SCRA 657. The Court held:

> The **primary objective of a preliminary investigation** is to **free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial**, until the reasonable probability of his or her guilt in a more or less summary proceeding by a competent office designated by law for that purpose. Secondarily, such summary proceeding also **protects the state from the burden of the unnecessary expense an effort in prosecuting alleged offenses** and in holding trials arising from false, frivolous or **groundless charges.**

Crespo v. Mogul.[2] The lethal repercussions of the majority opinion in the present case cannot and should not be ignored.

WHEREFORE, I vote to **DISMISS** the petition. I maintain that there is no *prima facie* case to hold private respondents criminally liable for either *estafa* or violation of the RSA, as duly found by State Prosecutors Rosario Rodrigo-Larracas and Lagrimas T. Agaran, who conducted the preliminary investigations of the seven criminal complaints filed by petitioners and others, which was likewise affirmed by the appellate court.

SECOND DIVISION

[G.R. No. 166676. September 12, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JENNIFER B. CAGANDAHAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; PERSONS AND FAMILY RELATIONS; CIVIL REGISTER; CORRECTION OF GENDER IN BIRTH CERTIFICATE; SUBSTANTIAL CHANGE THAT REQUIRES JUDICIAL ORDER. — The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides: ART. 412. No entry in a civil register shall be changed or corrected without a judicial

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[2] No. 53373, June 30, 1987, 151 SCRA 462. The Court likewise held that:

Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. **They have equally the duty not to prosecute when the evidence adduced is not sufficient to establish a *prima facie* case**.

order. Together with Article 376 of the Civil Code, this provision was amended by Republic Act No. 9048 in so far as clerical or typographical errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register. Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court. The entries envisaged in Article 412 of the Civil Code and correctable under Rule 108 of the Rules of Court are those provided in Articles 407 and 408 of the Civil Code: ART. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register. ART. 408. The following shall be entered in the civil register: (1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name. The acts, events or factual errors contemplated under Article 407 of the Civil Code include even those that occur after birth.

2. REMEDIAL LAW; CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; LIBERAL APPLICATION OF THE RULE; PETITION FURNISHED TO THE LOCAL CIVIL REGISTRAR AS SUBSTANTIAL COMPLIANCE TO THE RULE. — The OSG argues that the petition is fatally defective for non-compliance with Rules 103 and 108 of the Rules of Court because respondent's petition did not implead the local civil registrar. We agree, however, that there is substantial compliance with Rule 108 when respondent furnished a copy of the petition to the local civil registrar.

3. ID.; ID.; ID.; ID.; CASE OF CONGENITAL ADRENAL HYPERPLASIA (CAH) CONSIDERED IN CASE AT BAR. — Respondent undisputedly has CAH. This condition causes the early or "inappropriate" appearance of male characteristics.

A person, like respondent, with this condition produces too much androgen, a male hormone. A newborn who has XX chromosomes coupled with CAH usually has a (1) swollen clitoris with the urethral opening at the base, an ambiguous genitalia often appearing more male than female; (2) normal internal structures of the female reproductive tract such as the ovaries, uterus and fallopian tubes; as the child grows older, some features start to appear male, such as deepening of the voice, facial hair, and failure to menstruate at puberty. About 1 in 10,000 to 18,000 children are born with CAH. CAH is one of many conditions that involve intersex anatomy. During the twentieth century, medicine adopted the term "intersexuality" to apply to human beings who cannot be classified as either male or female. The term is now of widespread use. According to Wikipedia, intersexuality "is the state of a living thing of a gonochoristic species whose sex chromosomes, genitalia, and/or secondary sex characteristics are determined to be neither exclusively male nor female. An organism with intersex may have biological characteristics of both male and female sexes." In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. "It has been suggested that there is some middle ground between the sexes, a 'no-man's land' for those individuals who are neither truly 'male' nor truly 'female'." The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification. Ultimately, we are of the view that where the person is biologically or naturally intersex the determining factor in his gender classification would be what the individual, like respondent, having reached the age of majority, with good reason thinks of his/her sex. Respondent here thinks of himself as a male and considering that his body produces high levels of male hormones (androgen) there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons, like respondent, is fixed. In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or

not to undergo medical treatment to reverse the male tendency due to CAH. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an "incompetent" and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondent's position and his personal judgment of being a male. In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.

4. ID.; CHANGE OF NAME; DISCRETION OF COURT; CHANGE OF FEMININE NAME TO MASCULINE NAME PROPER, RECOGNIZING THE PREFERRED GENDER OF PETITIONER IN CASE AT BAR. — As for respondent's change of name under Rule 103, this Court has held that a change of name is not a matter of right but of judicial discretion, to be exercised in the light of the reasons adduced and the consequences that will follow. The trial court's grant of respondent's change of name from Jennifer to Jeff implies a change of a feminine name to a masculine name. Considering the consequence that respondent's change of name merely recognizes his preferred gender, we find merit in respondent's change of name. Such a change will conform with the change of the entry in his birth certificate from female to male.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Smith & Smith Law Office for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review under Rule 45 of the Rules of Court raising purely questions of law and seeking a reversal of the Decision[1] dated January 12, 2005 of the Regional Trial Court (RTC), Branch 33 of Siniloan, Laguna, which granted the Petition for Correction of Entries in Birth Certificate filed by Jennifer B. Cagandahan and ordered the following changes of entries in Cagandahan's birth certificate: (1) the name "Jennifer Cagandahan" changed to "Jeff Cagandahan" and (2) gender from "female" to "male."

The facts are as follows.

On December 11, 2003, respondent Jennifer Cagandahan filed a Petition for Correction of Entries in Birth Certificate[2] before the RTC, Branch 33 of Siniloan, Laguna.

In her petition, she alleged that she was born on January 13, 1981 and was registered as a female in the Certificate of Live Birth but while growing up, she developed secondary male characteristics and was diagnosed to have Congenital Adrenal Hyperplasia (CAH) which is a condition where persons thus afflicted possess both male and female characteristics. She further alleged that she was diagnosed to have clitoral hyperthropy in her early years and at age six, underwent an ultrasound where it was discovered that she has small ovaries. At age thirteen, tests revealed that her ovarian structures had minimized, she has stopped growing and she has no breast or menstrual development. She then alleged that for all interests and appearances as well as in mind and emotion, she has become a male person. Thus, she prayed that her birth certificate be corrected such that her gender be changed from female to male and her first name be changed from Jennifer to Jeff.

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[1] *Rollo*, pp. 29-32. Penned by Judge Florenio P. Bueser.

[2] *Id.* at 33-37.

The petition was published in a newspaper of general circulation for three (3) consecutive weeks and was posted in conspicuous places by the sheriff of the court. The Solicitor General entered his appearance and authorized the Assistant Provincial Prosecutor to appear in his behalf.

To prove her claim, respondent testified and presented the testimony of Dr. Michael Sionzon of the Department of Psychiatry, University of the Philippines-Philippine General Hospital. Dr. Sionzon issued a medical certificate stating that respondent's condition is known as CAH. He explained that genetically respondent is female but because her body secretes male hormones, her female organs did not develop normally and she has two sex organs – female and male. He testified that this condition is very rare, that respondent's uterus is not fully developed because of lack of female hormones, and that she has no monthly period. He further testified that respondent's condition is permanent and recommended the change of gender because respondent has made up her mind, adjusted to her chosen role as male, and the gender change would be advantageous to her.

The RTC granted respondent's petition in a Decision dated January 12, 2005 which reads:

> The Court is convinced that petitioner has satisfactorily shown that he is entitled to the reliefs prayed [for]. Petitioner has adequately presented to the Court very clear and convincing proofs for the granting of his petition. It was medically proven that petitioner's body produces male hormones, and first his body as well as his action and feelings are that of a male. He has chosen to be male. He is a normal person and wants to be acknowledged and identified as a male.
>
> WHEREFORE, premises considered, the Civil Register of Pakil, Laguna is hereby ordered to make the following corrections in the birth [c]ertificate of Jennifer Cagandahan upon payment of the prescribed fees:
>
> a) By changing the name from Jennifer Cagandahan to JEFF CAGANDAHAN; and
>
> b) By changing the gender from female to MALE.

It is likewise ordered that petitioner's school records, voter's registry, baptismal certificate, and other pertinent records are hereby amended to conform with the foregoing corrected data.

SO ORDERED.[3]

Thus, this petition by the Office of the Solicitor General (OSG) seeking a reversal of the abovementioned ruling.

The issues raised by petitioner are:

THE TRIAL COURT ERRED IN GRANTING THE PETITION CONSIDERING THAT:

I.

THE REQUIREMENTS OF RULES 103 AND 108 OF THE RULES OF COURT HAVE NOT BEEN COMPLIED WITH; AND,

II.

CORRECTION OF ENTRY UNDER RULE 108 DOES NOT ALLOW CHANGE OF "SEX" OR "GENDER" IN THE BIRTH CERTIFICATE, WHILE RESPONDENT'S MEDICAL CONDITION, *i.e.*, CONGENITAL ADRENAL HYPERPLASIA DOES NOT MAKE HER A "MALE."[4]

Simply stated, the issue is whether the trial court erred in ordering the correction of entries in the birth certificate of respondent to change her sex or gender, from female to male, on the ground of her medical condition known as CAH, and her name from "Jennifer" to "Jeff," under Rules 103 and 108 of the Rules of Court.

The OSG contends that the petition below is fatally defective for non-compliance with Rules 103 and 108 of the Rules of Court because while the local civil registrar is an indispensable party in a petition for cancellation or correction of entries under Section 3, Rule 108 of the Rules of Court, respondent's petition before the court *a quo* did not implead the local civil registrar.[5]

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

[4] *Id.* at 97.

[5] *Id.* at 99.

The OSG further contends respondent's petition is fatally defective since it failed to state that respondent is a *bona fide* resident of the province where the petition was filed for at least three (3) years prior to the date of such filing as mandated under Section 2(b), Rule 103 of the Rules of Court.[6] The OSG argues that Rule 108 does not allow change of sex or gender in the birth certificate and respondent's claimed medical condition known as CAH does not make her a male.[7]

On the other hand, respondent counters that although the Local Civil Registrar of Pakil, Laguna was not formally named a party in the Petition for Correction of Birth Certificate, nonetheless the Local Civil Registrar was furnished a copy of the Petition, the Order to publish on December 16, 2003 and all pleadings, orders or processes in the course of the proceedings,[8] respondent is actually a male person and hence his birth certificate has to be corrected to reflect his true sex/gender,[9] change of sex or gender is allowed under Rule 108,[10] and respondent substantially complied with the requirements of Rules 103 and 108 of the Rules of Court.[11]

Rules 103 and 108 of the Rules of Court provide:

Rule 103
CHANGE OF NAME

SECTION 1. *Venue*. – A person desiring to change his name shall present the petition to the Regional Trial Court of the province in which he resides, [or, in the City of Manila, to the Juvenile and Domestic Relations Court].

SEC. 2. *Contents of petition*. – A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

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[6] *Id.* at 103.

[7] *Id.* at 104.

[8] *Id.* at 136.

[9] *Id.* at 127.

[10] *Id.* at 134.

[11] *Id.* at 136.

(a) That the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;

(b) The cause for which the change of the petitioner's name is sought;

(c) The name asked for.

SEC. 3. *Order for hearing*. – If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

SEC. 4. *Hearing*. – Any interested person may appear at the hearing and oppose the petition. The Solicitor General or the proper provincial or city fiscal shall appear on behalf of the Government of the Republic.

SEC. 5. *Judgment*. – Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

SEC. 6. *Service of judgment*. – Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

Rule 108
CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

SECTION 1. *Who may file petition*. – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

SEC. 2. *Entries subject to cancellation or correction*. – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

SEC. 3. *Parties*. – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. *Notice and publication*. – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition*. – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SEC. 6. *Expediting proceedings*. – The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. *Order*. – After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

The OSG argues that the petition below is fatally defective for non-compliance with Rules 103 and 108 of the Rules of Court because respondent's petition did not implead the local civil registrar. Section 3, Rule 108 provides that the civil registrar and all persons who have or claim any interest which would be

affected thereby shall be made parties to the proceedings. Likewise, the local civil registrar is required to be made a party in a proceeding for the correction of name in the civil registry. He is an indispensable party without whom no final determination of the case can be had.[12] Unless all possible indispensable parties were duly notified of the proceedings, the same shall be considered as falling much too short of the requirements of the rules.[13] The corresponding petition should also implead as respondents the civil registrar and all other persons who may have or may claim to have any interest that would be affected thereby.[14] Respondent, however, invokes Section 6,[15] Rule 1 of the Rules of Court which states that courts shall construe the Rules liberally to promote their objectives of securing to the parties a just, speedy and inexpensive disposition of the matters brought before it. We agree that there is substantial compliance with Rule 108 when respondent furnished a copy of the petition to the local civil registrar.

The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides:

> ART. 412. No entry in a civil register shall be changed or corrected without a judicial order.

Together with Article 376[16] of the Civil Code, this provision was amended by Republic Act No. 9048[17] in so far as *clerical*

[12] *Republic v. Court of Appeals*, G.R. No. 103695, March 15, 1996, 255 SCRA 99, 106.

[13] *Ceruila v. Delantar*, G.R. No. 140305, December 9, 2005, 477 SCRA 134, 147.

[14] *Republic v. Benemerito*, G.R. No. 146963, March 15, 2004, 425 SCRA 488, 492.

[15] SEC. 6. *Construction*.- These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[16] Art. 376. No person can change his name or surname without judicial authority.

[17] AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL

or typographical errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.[18]

Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.[19]

The entries envisaged in Article 412 of the Civil Code and correctable under Rule 108 of the Rules of Court are those provided in Articles 407 and 408 of the Civil Code:

ART. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

ART. 408. The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

The acts, events or factual errors contemplated under Article 407 of the Civil Code include even those that occur after birth.[20]

OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTRAR WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES. APPROVED, MARCH 22, 2001.

[18] *Silverio v. Republic of the Philippines*, G.R. No. 174689, October 19, 2007, 537 SCRA 373, 388.

[19] *Id.* at 389.

[20] *Id.* at 389.

Respondent undisputedly has CAH. This condition causes the early or "inappropriate" appearance of male characteristics. A person, like respondent, with this condition produces too much androgen, a male hormone. A newborn who has XX chromosomes coupled with CAH usually has a (1) swollen clitoris with the urethral opening at the base, an ambiguous genitalia often appearing more male than female; (2) normal internal structures of the female reproductive tract such as the ovaries, uterus and fallopian tubes; as the child grows older, some features start to appear male, such as deepening of the voice, facial hair, and failure to menstruate at puberty. About 1 in 10,000 to 18,000 children are born with CAH.

CAH is one of many conditions[21] that involve intersex anatomy. During the twentieth century, medicine adopted the term "intersexuality" to apply to human beings who cannot be classified as either male or female.[22] The term is now of widespread use. According to Wikipedia, intersexuality "is the state of a living thing of a gonochoristic species whose sex chromosomes, genitalia, and/or secondary sex characteristics are determined to be neither exclusively male nor female. An organism with intersex may have biological characteristics of both male and female sexes."

Intersex individuals are treated in different ways by different cultures. In most societies, intersex individuals have been expected to conform to either a male or female gender role.[23] Since the rise of modern medical science in Western societies, some intersex

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[21] (1) 5-alpha reductase deficiency; (2) androgen insensitivity syndrome; (3) aphallia; (4) clitoromegaly; (5) congenital adrenal hyperplasia; (6) gonadal dysgenesis (partial & complete); (7) hypospadias; (8) Kallmann syndrome; (9) Klinefelter syndrome; (10) micropenis; (11) mosaicism involving sex chromosomes; (12) MRKH (mullerian agenesis; vaginal agenesis; congenital absence of vagina); (13) ovo-testes (formerly called "true hermaphroditism"); (14) partial androgen insensitivity syndrome; (15) progestin induced virilization; (16) Swyer syndrome; (17) Turner syndrome. [Intersexuality <http://en.wikipedia.org/wiki/Intersexual> (visited August 15, 2008).]

[22] Intersexuality <http://en.wikipedia.org/wiki/Intersexual> (visited August 15, 2008).

[23] Intersexuality <http://en.wikipedia.org/wiki/Intersexual> (visited August 15, 2008), citing Gagnon and Simon 1973.

people with ambiguous external genitalia have had their genitalia surgically modified to resemble either male or female genitals.[24] More commonly, an intersex individual is considered as suffering from a "disorder" which is almost always recommended to be treated, whether by surgery and/or by taking lifetime medication in order to mold the individual as neatly as possible into the category of either male or female.

In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. "It has been suggested that there is some middle ground between the sexes, a 'no-man's land' for those individuals who are neither truly 'male' nor truly 'female'."[25] The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification.

In the instant case, if we determine respondent to be a female, then there is no basis for a change in the birth certificate entry for gender. But if we determine, based on medical testimony and scientific development showing the respondent to be other than female, then a change in the subject's birth certificate entry is in order.

Biologically, nature endowed respondent with a mixed (neither consistently and categorically female nor consistently and categorically male) composition. Respondent has female (XX) chromosomes. However, respondent's body system naturally produces high levels of male hormones (androgen). As a result, respondent has ambiguous genitalia and the phenotypic features of a male.

Ultimately, we are of the view that where the person is biologically or naturally intersex the determining factor in his gender classification would be what the individual, like respondent,

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[24] Intersexuality <http://en.wikipedia.org/wiki/Intersexual> (visited August 15, 2008).

[25] M.T. v. J.T. 140 N.J. Super 77 355 A. 2d 204.

having reached the age of majority, with good reason thinks of his/her sex. Respondent here thinks of himself as a male and considering that his body produces high levels of male hormones (androgen) there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons, like respondent, is fixed.

Respondent here has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. Respondent could have undergone treatment and taken steps, like taking lifelong medication,[26] to force his body into the categorical mold of a female but he did not. He chose not to do so. Nature has instead taken its due course in respondent's development to reveal more fully his male characteristics.

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become

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[26] The goal of treatment is to return hormone levels to normal. This is done by taking a form of cortisol (dexamethasone), fludrocortisone, or hydrocortisone) every day. Additional doses of medicine are needed during times of stress, such as severe illness or surgery.

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Parents of children with congenital adrenal hyperplasia should be aware of the side effects of steroid therapy. They should report signs of infection and stress to their health care provider because increases in medication may be required. In additional, steroid medications cannot be stopped suddenly, or adrenal insufficiency will result.

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The outcome is usually associated with good health, but short stature may result even with treatment. Males have normal fertility. Females may have a smaller opening of the vagina and lower fertility. Medication to treat this disorder must be continued for life. (Congenital Adrenal Hyperplasia)

or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an "incompetent"[27] and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondent's position and his personal judgment of being a male.

In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.

As for respondent's change of name under Rule 103, this Court has held that a change of name is not a matter of right but of judicial discretion, to be exercised in the light of the reasons adduced and the consequences that will follow.[28] The trial court's grant of respondent's change of name from Jennifer to Jeff implies a change of a feminine name to a masculine name. Considering the consequence that respondent's change

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[27] The word "incompetent" includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation. (See Sec. 2 of Rule 92 of the Rules of Court)

[28] *Yu v. Republic of the Philippines*, 123 Phil. 1106, 1110 (1966).

of name merely recognizes his preferred gender, we find merit in respondent's change of name. Such a change will conform with the change of the entry in his birth certificate from female to male.

WHEREFORE, the Republic's petition is *DENIED*. The Decision dated January 12, 2005 of the Regional Trial Court, Branch 33 of Siniloan, Laguna, is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168637. September 12, 2008]

MICHAEL J. LAGROSAS, *petitioner, vs.* **BRISTOL-MYERS SQUIBB (PHIL.), INC./MEAD JOHNSON PHIL., RICHARD SMYTH as General Manager and FERDIE SARFATI, as Medical Sales Director,** *respondents.*

[G.R. No. 170684. September 12, 2008]

BRISTOL-MYERS SQUIBB (PHIL.), INC./MEAD JOHNSON PHIL., *petitioner, vs.* **COURT OF APPEALS and MICHAEL J. LAGROSAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SERIOUS MISCONDUCT; ELUCIDATED.— Serious misconduct as a valid cause for the dismissal of an employee is defined simply as improper or wrong conduct. It

is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant. However serious such misconduct, it must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. The act complained of must be related to the performance of the employee's duties such as would show him to be unfit to continue working for the employer. Thus, for misconduct or improper behavior to be a just cause for dismissal, it (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.

2. ID.; ID.; ID.; NOT APPRECIATED IN FIGHTING OUTSIDE COMPANY PREMISES AND OFFICE HOURS, AND IF NOT INTENTIONALLY DIRECTED AGAINST A CO-EMPLOYEE. — Tested against the foregoing standards, it is clear that Lagrosas was not guilty of serious misconduct. It may be that the injury sustained by Lim was serious since it rendered her unconscious and caused her to suffer cerebral contusion that necessitated hospitalization for several days. But we fail to see how such misconduct could be characterized as work-related and reflective of Lagrosas' unfitness to continue working for Bristol-Myers. Although we have recognized that fighting within company premises may constitute serious misconduct, we have also held that not every fight within company premises in which an employee is involved would automatically warrant dismissal from service. More so, in this case where the incident occurred outside of company premises and office hours and not intentionally directed against a co-employee, as hereafter explained.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; INJUNCTION BOND; PURPOSE. — It is settled that the purpose of a preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully. A preliminary injunction

> may be granted only when, among other things, the applicant, not explicitly exempted, files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued. The injunction bond is intended as a security for damages in case it is finally decided that the injunction ought not to have been granted. Its principal purpose is to protect the enjoined party against loss or damage by reason of the injunction, and the bond is usually conditioned accordingly. It is not a security for the judgment award by the labor arbiter.

APPEARANCES OF COUNSEL

Santos Santos & Santos Law Offices and *Fortun Narvasa & Salazar* for M. J. Lagrosas.

Dela Rosa and Nograles Law Offices for Bristol-Myers Squibb (Phils.), Inc., *et al.*

D E C I S I O N

QUISUMBING, *J.*:

Before this Court are two consolidated petitions. The first petition, docketed as **G.R. No. 168637**, filed by Michael J. Lagrosas, assails the Decision[1] dated January 28, 2005 and the Resolution[2] dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 83885. The second petition, docketed as **G.R. No. 170684**, filed by Bristol-Myers Squibb (Phil.), Inc./Mead Johnson Phil., assails the Resolutions[3] dated August 12, 2005

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[1] *Rollo* (G.R. No. 168637), pp. 35-46. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Juan Q. Enriquez, Jr. concurring.

[2] *Id.* at 32-33.

[3] *Rollo* (G.R. No. 170684), pp. 24-25 and 27-29.

and October 28, 2005 of the Court of Appeals in CA-G.R. SP No. 83885.

The facts are undisputed.

Michael J. Lagrosas was employed by Bristol-Myers Squibb (Phil.), Inc./Mead Johnson Phil. from January 6, 1997 until March 23, 2000 as Territory Manager in its Medical Sales Force Division.[4]

On February 4, 2000, Ma. Dulcinea S. Lim, also a Territory Manager and Lagrosas' former girlfriend, attended a district meeting of territory managers at McDonald's Alabang Town Center. After the meeting, she dined out with her friends. She left her car at McDonald's and rode with Cesar R. Menquito, Jr. When they returned to McDonald's, Lim saw Lagrosas' car parked beside her car. Lim told Menquito not to stop his car but Lagrosas followed them and slammed Menquito's car thrice. Menquito and Lim alighted from the car. Lagrosas approached them and hit Menquito with a metal steering wheel lock. When Lim tried to intervene, Lagrosas accidentally hit her head.

Upon learning of the incident, Bristol-Myers required Lagrosas to explain in writing why he should not be dismissed for assaulting a co-employee outside of business hours. While the offense is not covered by the Code of Discipline for Territory Managers, the Code states that "other infractions not provided for herein shall be penalized in the most appropriate manner at the discretion of management."[5] In his memo, Lagrosas admitted that he accidentally hit Lim when she tried to intervene. He explained that he did not intend to hit her as shown by the fact that he never left the hospital until he was assured that she was all right.[6]

In the disciplinary hearing that followed, it was established that Lagrosas and Lim had physical confrontations prior to the

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[4] Records, Vol. I, p. 53.

[5] *Id.* at 79.

[6] *Id.* at 82.

incident. But Lagrosas denied saying that he might not be able to control himself and hurt Lim and her boyfriend if he sees them together.

On March 23, 2000, Bristol-Myers dismissed Lagrosas effective immediately.[7] Lagrosas then filed a complaint[8] for illegal dismissal, non-payment of vacation and sick leave benefits, 13th month pay, attorney's fees, damages and fair market value of his Team Share Stock Option Grant.

On February 28, 2002, Labor Arbiter Renaldo O. Hernandez rendered a Decision[9] in NLRC NCR Case No. 00-03-02821-99, declaring the dismissal illegal. He noted that while Lagrosas committed a misconduct, it was not connected with his work. The incident occurred outside of company premises and office hours. He also observed that the misconduct was not directed against a co-employee who just happened to be accidentally hit in the process. Nevertheless, Labor Arbiter Hernandez imposed a penalty of three months suspension or forfeiture of pay to remind Lagrosas not to be carried away by the mindless dictates of his passion. Thus, the Arbiter ruled:

> WHEREFORE, premises considered, judgment is hereby [rendered] finding that respondent company illegally dismissed complainant thus, **ORDERING** it:
>
> 1) [t]o reinstate him to his former position without loss of seniority rights, privileges and benefits and to pay him full backwages reckoned from [the] date of his illegal dismissal on 23 March 2000 including the monetary value of his vacation/sick leave of 16 days per year reckoned from July 1, 2000 until actually reinstated, less three (3) months salary as penalty for his infraction;
>
> 2) to pay him the monetary equivalent of his accrued and unused combined sick/vacation leaves as of June 30, 2000 of 16 days x 3 years and 4 months – 10 days x ₱545.45 = ₱23,636.16 and the present fair market value of his Team Share stock option grant for eight hundred (800) BMS common shares of stock listed in the New York

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[7] *Id.* at 18-21.

[8] *Id.* at 1.

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

Stock Exchange which vested in complainant as of 01 July 1997, provisionally computed as 90% (800 shares x US$40.00 per share x ₱43.20/US$ = ₱1,244,160.00).

3) to pay him Attorney's fee of 10% on the entire computable amount.

All other claims of complainant are dismissed for lack of merit.

SO ORDERED.[10]

On appeal, the National Labor Relations Commission (NLRC) set aside the Decision of Labor Arbiter Hernandez in its Decision[11] dated September 24, 2002. It held that Lagrosas was validly dismissed for serious misconduct in hitting his co-employee and another person with a metal steering wheel lock. The gravity and seriousness of his misconduct is clear from the fact that he deliberately waited for Lim and Menquito to return to McDonald's. The NLRC also ruled that the misconduct was committed in connection with his duty as Territory Manager since it occurred immediately after the district meeting of territory managers.

Lagrosas moved for reconsideration. On May 7, 2003, the NLRC issued a Resolution[12] reversing its earlier ruling. It ratiocinated that the incident was not work-related since it occurred only after the district meeting of territory managers. It emphasized that for a serious misconduct to merit dismissal, it must be connected with the employee's work. The dispositive portion of the Resolution states:

WHEREFORE, premises considered, We find this time no reason to alter the Labor Arbiter's Decision of February 28, 2002 and hereby affirm the same in toto. We vacate our previous Decision of September 24, 2002.

SO ORDERED.[13]

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[10] *Id.* at 155.

[11] *Id.* at 534-543.

[12] *Id.* at 616-619.

[13] *Id.* at 618-619.

Bristol-Myers filed a motion for reconsideration which the NLRC denied in an Order dated February 4, 2004 in NLRC NCR Case No. 00-03-02821-99 (NLRC NCR CA No. 031646-02).[14] Later, Labor Arbiter Hernandez issued a writ of execution.[15] Notices of garnishment were then served upon the Philippine British Assurance Co., Inc. for the *supersedeas* bond posted by Bristol-Myers and the Bank of the Philippine Islands for the balance of the judgment award.[16]

Bristol-Myers moved to quash the writ of execution contending that it timely filed a petition for *certiorari* with the Court of Appeals. The appellate court gave due course to Bristol-Myers' petition and issued a temporary restraining order (TRO)[17] enjoining the enforcement of the writ of execution and notices of garnishment. Upon the expiration of the TRO, the appellate court issued a writ of preliminary injunction dated September 17, 2004.[18]

Bristol-Myers then moved to discharge and release the TRO cash bond. It argued that since it has posted an injunction cash bond, the TRO cash bond should be legally discharged and released.

On January 28, 2005, the appellate court rendered the following Decision:

WHEREFORE, the petition is **GRANTED**. The Resolution of May 7, 2003 and the Order of February 4, 2004 in NLRC NCR Case No. [00-03-02821-99] (NLRC NCR CA No. [031646-02]), are **REVERSED** and **SET ASIDE**. The public respondent NLRC's Decision dated September 24, 2002 which reversed the Labor Arbiter's decision and in effect sustained the legality of the private respondent's termination and the dismissal of his claim for the fair market value of the [Team Share] stock option grant is **REINSTATED** and **AFFIRMED**, with

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[14] *Id.* at 723-724.

[15] *Id.* at 806-808.

[16] Records, Vol. II, p. 31.

[17] CA *rollo*, p. 188.

[18] *Id.* at 406.

MODIFICATION that the petitioner shall pay the private respondent the monetary equivalent of his accrued and unused combined sick/ vacation leave plus ten (10%) percent thereof, as attorney's fees. The injunction bond and the TRO bond previously posted by the petitioner are **DISCHARGED**.

SO ORDERED.[19]

The appellate court considered the misconduct as having been committed in connection with Lagrosas' duty as Territory Manager since it occurred immediately after the district meeting of territory managers. It also held that the gravity and seriousness of the misconduct cannot be denied. Lagrosas employed such a degree of violence that caused damage not only to Menquito's car but also physical injuries to Lim and Menquito.

Lagrosas filed a motion for reconsideration which the appellate court denied.

In the meantime, Bristol-Myers moved to release the TRO cash bond and injunction cash bond in view of the Decision dated January 28, 2005. On August 12, 2005, the appellate court denied the motion as premature since the decision is not yet final and executory due to Lagrosas' appeal to this Court.[20]

Bristol-Myers filed a motion for reconsideration. On October 28, 2005, the appellate court resolved:

WHEREFORE, the petitioner's *Motion [f]or Reconsideration* dated September 6, 2005 is **PARTIALLY GRANTED** and the Resolution of August 12, 2005 is **RECONSIDERED** and **SET ASIDE**. The temporary restraining order cash bond in the amount of SIX HUNDRED THOUSAND PESOS (**₱600,000.00**) which was posted by the petitioners on July 19, 2004 is ordered **DISCHARGED** and **RELEASED** to the petitioners.

SO ORDERED.[21]

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[19] *Rollo* (G.R. No. 168637), pp. 45-46.

[20] *Rollo* (G.R. No. 170684), pp. 24-25.

[21] *Id.* at 29.

The appellate court held that upon the expiration of the TRO, the cash bond intended for it also expired. Thus, the discharge and release of the cash bond for the expired TRO is proper. But the appellate court disallowed the discharge of the injunction cash bond since the writ of preliminary injunction was issued *pendente lite*. Since there is a pending appeal with the Supreme Court, the Decision dated January 28, 2005 is not yet final and executory.

Hence, the instant petitions.

In **G.R. No. 168637**, Lagrosas assigns the following errors:

I.

…THE HONORABLE COURT OF APPEALS IN DECLARING THAT THE TERMINATION OF EMPLOYMENT OF THE PETITIONER-APPELLANT WAS LEGAL HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LABOR LAWS AND JURISPRUDENCE AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR THE EXERCISE OF THIS HONORABLE COURT'S POWER OF REVIEW AND/OR SUPERVISION.

II.

…THE HONORABLE COURT OF APPEALS IN IMPOSING THE PENALTY OF DISMISSAL, BEING A PENALTY TOO HARSH IN THIS CASE, DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LABOR LAWS AND JURISPRUDENCE AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR THE EXERCISE OF THIS HONORABLE COURT'S POWER OF REVIEW AND/OR SUPERVISION.[22]

In **G.R. No. 170684**, Bristol-Myers raises the following issue:

[WHETHER OR NOT THE HONORABLE] COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISALLOWING THE RELEASE AND DISCHARGE OF PETITIONER'S INJUNCTION BOND.[23]

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[22] *Rollo* (G.R. No. 168637), p. 6.

[23] *Rollo* (G.R. No. 170684), p. 12.

Simply put, the basic issues in the instant petitions are: (1) Did the Court of Appeals err in finding the dismissal of Lagrosas legal? and (2) Did the Court of Appeals err in disallowing the discharge and release of the injunction cash bond?

On the *first* issue, serious misconduct as a valid cause for the dismissal of an employee is defined simply as improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant. However serious such misconduct, it must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. The act complained of must be related to the performance of the employee's duties such as would show him to be unfit to continue working for the employer.[24]

Thus, for misconduct or improper behavior to be a just cause for dismissal, it (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.[25]

Tested against the foregoing standards, it is clear that Lagrosas was not guilty of serious misconduct. It may be that the injury sustained by Lim was serious since it rendered her unconscious and caused her to suffer cerebral contusion that necessitated hospitalization for several days. But we fail to see how such misconduct could be characterized as work-related and reflective of Lagrosas' unfitness to continue working for Bristol-Myers.

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[24] *Villamor Golf Club v. Pehid*, G.R. No. 166152, October 4, 2005, 472 SCRA 36, 48; *Samson v. National Labor Relations Commission*, G.R. No. 121035, April 12, 2000, 330 SCRA 460, 471.

[25] *Lopez v. National Labor Relations Commission*, G.R. No. 167385, December 13, 2005, 477 SCRA 596, 601; *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 768.

Although we have recognized that fighting within company premises may constitute serious misconduct, we have also held that not every fight within company premises in which an employee is involved would automatically warrant dismissal from service.[26] More so, in this case where the incident occurred outside of company premises and office hours and not intentionally directed against a co-employee, as hereafter explained.

First, the incident occurred outside of company premises and after office hours since the district meeting of territory managers which Lim attended at McDonald's had long been finished. McDonald's may be considered an extension of Bristol-Myers' office and any business conducted therein as within office hours, but the moment the district meeting was concluded, that ceased too. When Lim dined with her friends, it was no longer part of the district meeting and considered official time. Thus, when Lagrosas assaulted Lim and Menquito upon their return, it was no longer within company premises and during office hours. *Second*, Bristol-Myers itself admitted that Lagrosas intended to hit Menquito only. In the Memorandum[27] dated March 23, 2000, it was stated that "You got out from your car holding an umbrella steering wheel lock and proceeded to hit Mr. Menquito. Dulce tried to intervene, but you accidentally hit her on the head, knocking her unconscious."[28] Indeed, the misconduct was not directed against a co-employee who unfortunately got hit in the process. *Third*, Lagrosas was not performing official work at the time of the incident. He was not even a participant in the district meeting. Hence, we fail to see how his action could have reflected his unfitness to continue working for Bristol-Myers.

In light of Bristol-Myers' failure to adduce substantial evidence to prove that Lagrosas was guilty of serious misconduct, it cannot use this ground to justify his dismissal. Thus, the dismissal of Lagrosas' employment was without factual and legal basis.

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[26] *Supreme Steel Pipe Corporation v. Bardaje*, G.R. No. 170811, April 24, 2007, 522 SCRA 155, 167.

[27] Records, Vol. I, pp. 18-21.

[28] *Id.* at 18.

On the *second* issue, it is settled that the purpose of a preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully.[29]

A preliminary injunction may be granted only when, among other things, the applicant, not explicitly exempted, files with the court where the action or proceeding is pending, a *bond* executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.[30]

The injunction bond is intended as a security for damages in case it is finally decided that the injunction ought not to have been granted. Its principal purpose is to protect the enjoined party against loss or damage by reason of the injunction, and the bond is usually conditioned accordingly.[31]

In this case, the Court of Appeals issued the writ of preliminary injunction to enjoin the implementation of the writ of execution and notices of garnishment "pending final resolution of this case or unless the [w]rit is sooner lifted by the Court."[32]

By its Decision dated January 28, 2005, the appellate court disposed of the case by granting Bristol-Myers' petition and reinstating the Decision dated September 24, 2002 of the NLRC which dismissed the complaint for dismissal. It also ordered the discharge of the TRO cash bond and injunction cash bond.

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[29] *Medina v. Greenfield Development Corporation*, G.R. No. 140228, November 19, 2004, 443 SCRA 150, 159.

[30] *Limitless Potentials, Inc. v. Court of Appeals*, G.R. No. 164459, April 24, 2007, 522 SCRA 70, 83-84.

[31] *Id.* at 84.

[32] CA *rollo*, p. 406.

Thus, both conditions of the writ of preliminary injunction were satisfied.

Notably, the appellate court ruled that Lagrosas had no right to the monetary awards granted by the labor arbiter and the NLRC, and that the implementation of the writ of execution and notices of garnishment was properly enjoined. This in effect amounted to a finding that Lagrosas did not sustain any damage by reason of the injunction. To reiterate, the injunction bond is intended to protect Lagrosas against loss or damage by reason of the injunction only. Contrary to Lagrosas' claim, it is not a security for the judgment award by the labor arbiter.[33]

Considering the foregoing, we hold that the appellate court erred in disallowing the discharge and release of the injunction cash bond.

WHEREFORE, the two consolidated petitions are *GRANTED*. In **G.R. No. 168637**, filed by Michael J. Lagrosas, the Decision dated January 28, 2005, and the Resolution dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 83885 are *REVERSED*. The Resolution dated May 7, 2003, and the Order dated February 4, 2004 of the NLRC in NLRC NCR Case No. 00-03-02821-99 (NLRC NCR CA No. 031646-02) are *REINSTATED* and hereby *AFFIRMED*.

In **G.R. No. 170684**, filed by Bristol-Myers Squibb (Phil.), Inc./Mead Johnson Phil., the Resolutions dated August 12, 2005 and October 28, 2005 of the Court of Appeals in CA-G.R. SP No. 83885 are *REVERSED*. The injunction cash bond in the amount of SIX HUNDRED THOUSAND PESOS (₱600,000) which was posted by Bristol-Myers Squibb (Phil.), Inc./Mead Johnson Phil. on September 17, 2004 is hereby ordered *DISCHARGED* and *RELEASED* to it.

No pronouncement as to costs.

SO ORDERED.

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

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[33] *Rollo* (G.R. No. 170684), p. 318.

FIRST DIVISION

[G.R. No. 169400. September 12, 2008]

NAPOLEON G. RAMA, *petitioner, vs.* **SPOUSES EDUARDO and CONCHITA JOAQUIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF LAW, NOT PROPER. — The issue before us necessitates an inquiry into the facts. Time and again, we have held that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law, save for certain exceptions, such as when the findings of fact of the RTC and the CA are conflicting.

2. CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; SUCCESSION; WILLS; IN CONSTRUCTION THEREOF, THE INTENTION OF TESTATOR CONTROLS; CASE AT BAR. — It is well-settled that in construing the provisions of a will, the intent of the testator is controlling. In this case, had it been Lucia's intention to prohibit the disposition of *all* her properties (listed and residual alike), she could have easily said so, specially since, as pointed out by petitioner himself, the will itself was replete with limiting provisions allegedly pointing to the inescapable conclusion that she wanted the properties to remain in her heirs' hands until they reached 30. Indeed, the will did resonate convincingly with said intention and more. A perusal of the will also reveals that it was specifically tailored to the testatrix's wishes.

APPEARANCES OF COUNSEL

Florido & Largo Law Offices for petitioner.
Zosa & Quijano Law Offices for respondents.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the March 29, 2005 decision[1] and July 28, 2005 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 77327.

During Lucia Rama Limchiu's (Lucia's) lifetime, she executed a will designating petitioner Napoleon G. Rama as executor. When she died, a large portion of her estate went to her nephew, Jose Limchiu, Jr. (Jose), including the real property subject of this controversy, Lot 3, Block 12 Guadalupe Heights, Cebu City (Guadalupe Heights property). It was eventually sold by Jose to respondent spouses Eduardo and Conchita Joaquin.

The dispute arose when Jose's wife and judicial guardian, Gladys I. Limchiu (Gladys),[3] filed a complaint in the Regional Trial Court (RTC) of Cebu City, Branch 20 to nullify the deed of absolute sale executed by Jose to respondents. She averred that the assailed deed was forged as Jose did not appear before the notary public to subscribe to the same and that the residence certificate in the notarial acknowledgment was fake.

Petitioner filed a complaint in intervention in his capacity as executor of Lucia's will. He joined Gladys in praying for the nullification of the contentious document on the grounds cited by Gladys and on the additional ground that the sale was in violation of a provision in Lucia's will prohibiting her devisees

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[1] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Vicente L. Yap (retired) and Enrico A. Lanzanas of the Twentieth Division of the Court of Appeals. *Rollo*, pp. 49-57.

[2] *Id.*, pp. 64-65.

[3] She was appointed Jose's judicial guardian only on October 7, 1993, almost two years after the latter alienated the Guadalupe Heights property to respondents on October 30, 1991.

She did not join petitioner in filing a petition for review on *certiorari* in this Court.

from disposing of the properties given to them before they reached the age of 30. Jose sold the subject property to respondents when he was only 28 years old.

Respondents filed their answer to the complaint in intervention, alleging, among others, that the said prohibition did not apply to the Guadalupe Heights property.

After trial on the merits, the trial court rendered judgment declaring the sale void. The court *a quo* anchored its decision mainly on petitioner's and Gladys' contention that the contested property came within the purview of the aforementioned prohibition stated in the testatrix's will. The dispositive portion of the decision[4] read:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring the Conditional Deed of Sale dated June, 1985 (Exh. "6") and the Deed of Absolute Sale dated October 30, 1991 (Exh. "38") null and void *ab initio*;
>
> 2. Ordering the Register of Deeds of Cebu City to cancel TCT No. 129699 in the name of Eduardo Joaquin, married to Conchita Aviles Joaquin, dated July 20, 1994 (Exh. "5");
>
> 3. Declaring the parcel of land (covered by TCT No. 129699) as well as the house constructed thereon (covered by Tax Declaration No. 07080) as the property of the estate of the late Lucia R. Limchiu; [and]
>
> 4. Ordering the defendants to pay the plaintiff the sum of ₱250,000.00 as moral and compensatory damages; the sum of ₱100,000.00 as exemplary damages; the sum of ₱100,000.00 as attorney's fees and litigation expenses in the sum of ₱20,000.00.
>
> SO ORDERED.

On appeal, however, the CA reversed the decision of the trial court:

> WHEREFORE, in view of the foregoing premises, the assailed decision of the lower court is hereby REVERSED and SET ASIDE

[4] *Rollo*, pp. 31-47.

and a new one entered DISMISSING the complaint in Civil Case No. CEB-15453.

SO ORDERED.

Hence, this petition.

The issue before us is simple: was the sale of the contested property valid or void?

Petitioner contends that the CA erred in its decision as the sale was in violation of Lucia's will, which, according to him, expressly prohibited Jose from disposing of his inherited properties before he reached the age of 30.

The petition has no merit.

Preliminarily, it should be noted that the issue before us necessitates an inquiry into the facts. Time and again, we have held that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law, save for certain exceptions, such as when the findings of fact of the RTC and the CA are conflicting.[5]

In the instant case, as between the conflicting rulings of the RTC and the CA, that of the latter commends itself for adoption as it was more in accord with the evidence on hand and the applicable laws and jurisprudence.

We agree with the CA that Lucia's will indeed contained a provision, found under the third disposition on page 3, prohibiting her heirs from disposing of the properties devised to them before they reached the age of 30:

x x x x x x x x x

It is my express will that **the said real properties** shall not be sold and disposed of or encumbered in any manner by the devisees until after they have reach[ed] their respective thirtieth (30th) birthday…

x x x x x x x x x

[5] *B & I Realty Co., Inc. v. Spouses Caspe*, G.R. No. 146972, 29 January 2008.

We also agree with the CA that the prohibition was applicable only to those *real properties listed under the third disposition on pages 1, 2 and 3 of the will*. The use by the testatrix of the phrase *"the said real properties"* showed her intention to prohibit the alienation only of those real properties that she had specifically identified and listed.[6]

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[6] THIRD. I hereby give, devise and bequeath:

(a) To my nephew JOSE LIMCHIU, JR., the following described properties:

1.

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
18, Blk. 7	23439	35695	₱ 480.00	240	Mandaue
Res. Hse.		35710	8,000.00		"
3491	8091	21878	2,120.00	6,701	Talisay
2714-A	37837	33134	5,920.00	1,973	V. Rama
Apt. Hse.		34452	10,000.00		"
2714-A-8 (1/2)	37839	34998	650.00	654	"

2. ONE HALF (1/2) undivided share of:

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
2542-B-1	20012	34626	₱ 6,190.00	4,127	Mandaue
5183 (1/2)	8408	30238	35,040.00	258	Magallanes
864 (1/2)	8409	"		331	"
5059 (1/2)	8739	30243	32,970.00	91	"
866 (1/2)	8407	"		380	"
861 (1/2)	8405	30242	20,000.00	571	"
865 (1/2)	8404	30244	16,920.00	443	"
975 (1/2)	8406	30230	9,480.00	237	"
867 (1/2)	8741	30237	4,100.00	82	"
5185 (1/2)	8740	30239	180.00	2	"
5184 (1/2)	11374	30241	810.00	9	"
House (1/2)		016515-R	6,000.00		"

subject to the express condition that if he dies before reaching his thirtieth (30th) birthday, then and in that event all said real properties shall pass to and vested in absolute ownership to my sister Milagros L. Kimseng, or her heirs in equal shares, to whom I devise the same.

3. All my shares of stocks with PICOP, HIXBAR, PHIL. OIL, SAN MIGUEL BREWERY, and PLANTERS PRODUCTS, stock certificate of which are placed in a safety box deposit of the Philippine Bank of Communications, Cebu Branch, Cebu City;

The property in question was not yet part of Lucia's estate at the time of the execution of her will on February 17,

4. Automobile and other personal properties;

5. 4/5 undivided interest in the grape farms at Cansojong, Talisay, Cebu.

(b) To my sister MILAGROS L. KIMSENG, the following described property:

ONE HALF (1/2) undivided share of:

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
2542-B-1	20012	34626	₱ 6,190.00	4,127	Mandaue
5183 (1/2)	8408	30238	35,040.00	258	Magallanes
864 (1/2)	8409	"		331	"
5059 (1/2)	8739	30243	32,970.00	91	"
866 (1/2)	8407	"		380	"
861 (1/2)	8405	30242	20,000.00	571	"
865 (1/2)	8404	30244	16,920.00	443	"
975 (1/2)	8406	30240	9,480.00	237	"
867 (1/2)	8741	30237	4,100.00	82	"
5185 (1/2)	8740	30239	180.00	2	"
5184 (1/2)	11374	30241	810.00	9	"
House (1/2)		016515-R	6,000.00		"

(c) To my nephew JOSEPH KIMSENG, the following described real property:

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
3470-A	30178	31844	₱ 8,190.00	1,463	Talisay

(d) To my nieces SUSANA KIMSENG and MARIAN KIMSENG, in equal share, the following described real property:

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
2-882	40515	28808	₱ 1,090.00	181	Gonzales Cpd.
House		28230	7,000.00		"

(e) To my nephew ARTURO KIMSENG, the following described real property:

LOT NO.	T.C.T.	TD NO.	A.V.	AREA	LOCATION
5053 (1/3)	1793	00064	₱ 3,660.00	12,384	Lapulapu
4301 (1/3)	3370	00847	1,930.00	5,918	"
4495 (1/3)	2962			(illegible)	

(f) To my nieces MARIAN KIMSENG and SUSANA KIMSENG, share and share alike, all my jewelry. (*Rollo*, pp. 15-17.)

1976 and could not have been among those listed under the third disposition on pages 1, 2 and 3 to be bequeathed in favor of her devisees. Instead, it formed part of her *residual estate* which carried no such prohibition and whose controlling provision was the fourth disposition of the will stating that:

> FOURTH. **All the rest, residue and remainder of my estate**, which I may own at the time of my death, both real and personal, and of any kind and description wherever the same may be situated, I give, bequeath and devise to my nephew, JOSE LIMCHIU, JR. In the event Jose Limchiu, Jr. shall predecease me then in such eventuality I bequeath and devise the said residue of my estate to my sister Milagros L. Kimseng, or to her children in equal share should she predecease Jose Limchiu, Jr. (Emphasis supplied)

Worthy of note is the fact that the aforequoted fourth disposition did not contain the same prohibition as that so clearly provided for in the third. Thus, it can reasonably be concluded that no prohibition on selling existed with regard to Lucia's residual properties. As the Guadalupe Heights property clearly formed part of her residual estate, there was no prohibition for its alienation by Jose.

Petitioner, however, insists that if the CA's interpretation of the testament is upheld, the intent of the decedent (for her devisees to hold on to their inheritance until they reached 30) will be violated. According to him, there was no sense in prohibiting the alienation of the listed properties under the third disposition, on the one hand, and in allowing the sale of the residual ones under the fourth disposition, on the other.

It is well-settled that in construing the provisions of a will, the intent of the testator is controlling.[7] In this case, had it

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[7] *Seangio v. Reyes*, G.R. Nos. 140371-72, 27 November 2006, 508 SCRA 177, 187, *citing* III A. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 38 (1979). In said case, we held that "it is a fundamental principle that the intent or the will of the testator, expressed in the form and within the limits prescribed by law, must be recognized as the supreme law in succession. All rules of construction are designed and give effect to that intention. It is only when the intention of the testator is contrary to law, morals or public policy that it cannot be given effect."

been Lucia's intention to prohibit the disposition of *all* her properties (listed and residual alike), she could have easily said so, specially since, as pointed out by petitioner himself, the will itself was replete with limiting provisions allegedly pointing to the inescapable conclusion that she wanted the properties to remain in her heirs' hands until they reached 30.

Indeed, the will did resonate convincingly with said intention, and more. A perusal of the will also reveals that it was specifically tailored to the testatrix's wishes. For instance, the seventh disposition of her will provided:

> SEVENTH. That I hereby nominate, constitute and appoint ATTY. NAPOLEON G. RAMA, as sole executor of this my Last Will and Testament x x x and hereby manifest that it is not my wish and desire that any of my brothers Jose R. Limchiu, Luis R. Limchiu and Carmelo R. Limchiu be appointed administrator as substitute for Atty. Napoleon G. Rama.

Furthermore, in the eighth disposition, the testatrix expressly stated that:

> EIGHT. If any heir, devisee or legatee hereunder contest this will or any part or provisions hereof, any share given to such devisee or legatee is hereby revoked and shall become void, and the property or properties bequeathed to him/her/them shall become a part of the residue of my estate and shall be disposed of as it is provided herein for the disposition of such residue. Moreover, if any other person shall contest this will or object to any of the provisions hereof, I give to such person so contesting or objecting the sum of ONE PESO (₱1.00) and no more.

As can be seen, Lucia not only controlled the manner in which her estate was to be distributed among her heirs, she also saw it fit to include in her will the foregoing provisions to ensure that her every wish would be followed to the last detail. Thus, had it been her intention to subject the remaining estate to the same prohibition covering the listed real properties, she could have easily done so. She did not. In any case, it was not entirely impossible for her to have allowed the rest of her properties to be alienated by her heirs as necessary.

Finally, petitioner insists that the sale of the property was void in other aspects as well (*i.e.*, that the assailed deed of absolute sale was a forgery and that the residence certificate entered in the notarial acknowledgment thereof was fake). There is no need to pass upon these issues. By virtue of our ruling that the prohibition did not apply to the Guadalupe Heights property, Lucia's estate which petitioner represents and which is the real party in interest[8] no longer has the personality to assail the validity of the sale. Legally speaking, petitioner has become a stranger to the transaction as he does not stand to benefit from its annulment.

WHEREFORE, the petition is hereby *DENIED*. The March 29, 2005 decision and July 28, 2005 resolution of the Court of Appeals in CA-G.R. CV No. 77327 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales,[*] *Nachura,*[**] and *Leonardo-de Castro, JJ.*, concur.

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[8] Section 2, Rule 3 of the Rules of Court provided:

Sec. 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[**] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 518.

FIRST DIVISION

[G.R. No. 169657. September 12, 2008]

Lt. (Ret.) EDUARDO DE OCAMPO, *petitioner, vs.* **PO3 EUZUETO R. REY,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; VILLAMOR AIRBASE HOUSING PROJECT (VAHP) POLICY GUIDELINES; DECISIONS OF THE AWARDS AND ARBITRATION COMMITTEE (ACC) APPEALABLE TO THE EXECUTIVE COMMITTEE *EN BANC*, WHICH IS NOT EQUIVALENT TO THE NATIONAL HOUSING AUTHORITY (NHA); CASE AT BAR. — The core issue for our resolution is whether the NHA could modify the recommendation of the AAC. Par. 11.2 of the VAHP policy guidelines states that: The decisions of the AAC shall be appealable to the Executive Committee *en banc* whose decision shall be final and executory. Petitioner avers that the Executive Committee did not appear to function and that, in practice, it was the NHA that reviewed the AAC's recommendations. We disagree. The VAHP was not the project of the NHA alone. A memorandum of agreement dated January 23, 1995 was jointly executed by the Bases Conversion Development Authority, Department of National Defense, city government of Pasay and the NHA for the implementation of the project. They agreed on the creation of an Executive Committee composed of their respective representatives. Hence, the Executive Committee was not equivalent to the NHA. It was an inter-agency committee. Petitioner's argument that it was the NHA which in practice reviewed AAC's recommendations lacks merit. Practice cannot take precedence over clear policies and rules agreed upon by the parties themselves. Otherwise, the rule of law will be meaningless. Moreover, since petitioner was claiming a right under the VAHP, he was bound to comply with the policy guidelines governing the acquisition, enforcement and termination of rights and interests created under the said project. One of these policy guidelines was the appeal to the Executive Committee *en banc* under par. 11.2. Consequently, since the

AAC's recommendation was not appealed to the Executive Committee *en banc,* its decision became final and executory.

APPEARANCES OF COUNSEL

Diansuy and Anni Law Offices for petitioner.
Recalde Law Offices for respondent.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the January 13, 2005 decision[2] and September 2, 2005 amended decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 81097.

The case involves Lots 13 and 21, Block 18 of the Villamor Airbase Housing Project (VAHP) and the structures/houses built thereon identified as Tag Nos. 95-3-0094 and 95-3-0095, respectively.[4]

Rodolfo Ambata was the registered owner of the houses, with petitioner Eduardo de Ocampo and respondent Euzueto R. Rey, respectively, as occupants/lessees thereof.[5] In 1995, Ambata was reported in a census to be an absentee house owner (AHO).[6] Under the VAHP policy guidelines, AHOs were disqualified from owning lots within the VAHP.[7] But, the occupants or lessees of such houses could be awarded the

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes of the Third Division of the Court of Appeals. *Rollo*, pp. 26-33.

[3] *Id.*, pp. 36-41.

[4] Lot 13 has an area of 200 square meters while Lot 21 has an area of 72 square meters; *id.*, p. 27.

[5] Along with Ruel Falceso, Victor Abad, Edilberto de Raya; *id.*

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

[7] Par. 3.4; *id.*, p. 68.

lots.[8] Thus, on October 16, 1996, the Awards and Arbitration Committee (AAC) of the VAHP made this recommendation:

> The AAC recommended [the] disqualification of the owner, Rodolfo Ambata, censused as AHO. He will dispose his property to the renters – being qualified for award [with] the following [areas] to [be distributed to] the renters:
>
> | | | |
> |---|---|---|
> | 1) | Edilberto De Raya | - 50 square meters |
> | 2) | [Respondent] | - 50 square meters |
> | 3) | Ruel Falceso | - 50 square meters |
> | 4) | Eduardo de Ocampo | - 50 square meters |
> | 5) | Abad, Victor | - 72 square meters |
>
> The price must be agreeable to all parties – if not [the Project Management Office][9] will take charge of the disposition of the lot. The owner will be read/[notified] of his disqualification and will be given 30 days for action.
>
> The potential awardee will be subjected [to the] prequalification process.[10]

On January 27, 1999, Ambata executed a special power of attorney (SPA) in favor of Gliceria B. Moore[11] authorizing the latter "to sign, execute, deliver and endorse a deed of absolute sale or other pertinent documents of conveyance" for the transfer of his interest over the real property located at P 35-12, 9th Street, Villamor Airbase, Pasay City (the house with Tag No. 95-3-0094.)

On June 18, 1999, the AAC recommendation was forwarded to the National Housing Authority (NHA) for affirmation.[12]

On April 8, 2000, Moore, by virtue of the SPA, sold to respondent the aforementioned residential house.[13] On October

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[8] Par. 5.2; *id.*, p. 70.

[9] *Id.*, p. 69.

[10] *Id.*, p. 27.

[11] Spelled as "Gleceria" in the SPA and deed of absolute sale; *id.*, pp. 52 and 54.

[12] *Id.*, p. 30.

[13] *Id.*, p. 52.

6, 2000, petitioner filed a petition in the NHA to change his status from "rent-free occupant" to "census[ed] house owner-occupant" and further requested that the lot on which his house stood be awarded to him.[14] Under the VAHP guidelines, a house owner had priority over lessees in the award of the lot where the house was situated.[15]

In a letter dated June 18, 2002, the NHA[16] confirmed AAC's recommendation disqualifying Ambata from the award of the lots considering that he was an AHO. It granted petitioner's request for a change of his status from rent-free occupant to residing house owner insofar as the house with Tag No. 95-3-0094 was concerned. Accordingly, the AAC's recommendation on the lot allocations was modified as follows:

> a) With respect to Lot 13, Block 18, [petitioner] is awarded one hundred fifty (150) square meters portion thereof with its frontage to Road Lot 17; while the remaining fifty (50) square meters thereof; and
>
> b) Lot 21, also of Block 18, to be divided equally by and among de Raya, Falceso, [respondent] and Abad, subject however to right of way among them and provided that rights and interest over the premises they are respectively occupying are waived or transferred in their favor by [petitioner], the new owner of the said houses.[17]

The lot allocation of petitioner was increased from 50 sq. m. to 150 sq. m. while respondent's allocation was reduced from 50 sq. m. to 30 sq. m.[18]

On July 19, 2002, respondent sought reconsideration of the NHA award. He argued that petitioner was not a qualified beneficiary because he was an awardee of a lot in another housing project and asserted that he (respondent) desired to

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[14] *Id.*, pp. 28 and 93.

[15] Par. 5.1, *et seq.*; *id.*, p. 70.

[16] Through its General Manager Edgardo D. Pamintuan; *id.*, p. 63.

[17] *Id.*, pp. 28, 62-63.

[18] *Id.*, p. 94.

exercise his right of pre-emption. It was denied by the NHA in a letter dated November 12, 2002.[19]

On November 20, 2002, respondent appealed to the Office of the President (OP).[20] In a resolution dated June 10, 2003, the OP dismissed the appeal and affirmed the findings and recommendation of the NHA.[21] Reconsideration was denied in an order dated November 27, 2003.[22]

Aggrieved anew, respondent filed in the CA a petition for review of the June 10, 2003 resolution and November 27, 2003 order of the OP, docketed as CA-G.R. SP No. 81097.[23] In a decision dated January 13, 2005, the CA granted the petition and set aside the assailed resolution and order of the OP. It held that the lot allocations recommended by the AAC should not have been modified. It found that respondent was not informed of the sale to petitioner so the former was not able to exercise his right of pre-emption under par. 4.21 of the VAHP policy guidelines.[24] Thus, it remanded the case to the NHA and directed it to award the lots in accordance with the allocations recommended by the AAC.

Both the NHA and petitioner filed motions for reconsideration. The CA issued an amended decision on September 2, 2005 wherein it denied the two motions. It ruled that under par. 11.2 of the VAHP policy guidelines, the recommendations of the AAC were appealable to the Executive Committee *en banc*

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[19] *Id.*, pp. 28 and 64.

[20] Docketed as O.P. Case No. 02-k-560. De Raya, Falceso and Abad no longer appealed the NHA award; *id.*, p. 7.

[21] Through Undersecretary Enrique D. Perez; *id.*, pp. 28 and 66.

[22] *Id.*, pp. 27 and 65.

[23] Under Rule 43 of the Rules of Court; *id.*, p. 26.

[24] *Id.*, p. 32. Par. 4.21 states:

"Right of Pre-emption – the right of the censused renters of a structure to be given the first option to acquire or purchase the structure from censused structure owner who do not qualify as a beneficiary over all other censused households." (*Id.*, p. 69.)

specifically created for the VAHP. Even if the general manager of the NHA reviewed the findings and recommendations of the AAC, his or her decisions were not binding on the Executive Committee unless the latter approved them.[25] It also clarified that the remand involved only the allocation of the lots in favor of respondent considering that the other parties chose not to appeal the NHA decision.[26]

Hence this petition with prayer for writ of preliminary injunction of temporary restraining order to prevent the CA from enforcing its decision.

The core issue for our resolution is whether the NHA could modify the recommendation of the AAC.

The petition lacks merit.

Par. 11.2 of the VAHP policy guidelines states that:

> The decisions of the AAC shall be appealable to the Executive Committee *en banc* whose decision shall be final and executory.[27]

Petitioner avers that the Executive Committee did not appear to function and that, in practice, it was the NHA that reviewed the AAC's recommendations.[28] We disagree.

The VAHP was not the project of the NHA alone. A memorandum of agreement dated January 23, 1995 was jointly executed by the Bases Conversion Development Authority, Department of National Defense, city government of Pasay and the NHA for the implementation of the project.[29] They agreed on the creation of an Executive Committee composed of their respective representatives.[30] Hence, the Executive

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[25] *Id.*, p. 40.

[26] *Id.*, p. 40.

[27] *Id.*, p. 72.

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

[29] *Id.*, p. 223.

[30] *Id.*, p. 74.

Committee was not equivalent to the NHA. It was an inter-agency committee.

Petitioner's argument that it was the NHA which in practice reviewed AAC's recommendations lacks merit. Practice cannot take precedence over clear policies and rules agreed upon by the parties themselves. Otherwise, the rule of law will be meaningless.

Moreover, since petitioner was claiming a right under the VAHP, he was bound to comply with the policy guidelines governing the acquisition, enforcement and termination of rights and interests created under the said project. One of these policy guidelines was the appeal to the Executive Committee *en banc* under par. 11.2.

Consequently, since the AAC's recommendation was not appealed to the Executive Committee *en banc*, its decision became final and executory.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales,[*] *Nachura,*[**] and *Leonardo-de Castro, JJ.*, concur.

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[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[**] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 518.

FIRST DIVISION

[G.R. No. 170266. September 12, 2008]

ENGRACIO A. GUERZON, JR., LILIAN E. CRUZ and JOSEFINA O. BAUYON, *petitioners, vs.* **PASIG INDUSTRIES, INC., MASAHIRO FUKADA and YOSHIKITSU FUJITA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VOLUNTARY RESIGNATION; ALLEGED STREAMLINING AS AUTHORIZED CAUSE OF TERMINATION, RENDERED IMMATERIAL. — Petitioners held responsible positions in Pasig Industries, Inc. (PII). Employees of their educational backgrounds and professional standing do not easily relinquish their legal rights unless they intend to. In fact, petitioners even bargained to improve the terms of the Special Separation Package (SSP) and, after successfully doing so, voluntarily resigned from respondent PII. Consequently, whether the streamlining of PII's operations constituted an authorized cause for petitioners' termination became immaterial in view of their voluntary resignation.

APPEARANCES OF COUNSEL

R.A. Din, Jr. & Associates Law Offices for petitioners.
Bausa Ampil Suarez Paredes & Bausa for respondents.

R E S O L U T I O N

CORONA, *J.*:

Petitioners Engracio A. Guerzon, Jr., Lilian E. Cruz and Josefina O. Bauyon were employees of respondent Pasig Industries, Inc. (PII) stationed in its Makati office. Guerzon was PII's export/import manager for 21 years; Cruz was the company's chief accountant for 20 years and Bauyon was a member of PII's accounting staff since 1989.

In 1995, respondent Yoshikitsu Fujita[1] informed petitioners that PII's parent company had decided to close the Makati office. To streamline operations, functions performed by the Makati office would be transferred to its facilities in the Bataan Export Processing Zone. For this reason, petitioners were given the option to resign, in which case they would be entitled to a special separation package (SSP) equivalent to one-month basic salary for each year of service.[2]

Petitioners decided to resign but requested a recomputation of their respective separation pay based on the monthly gross pay (*i.e.*, basic pay plus all allowances). PII, through Fujita, acceded[3] and accordingly paid Guerzon, ₱548,100;[4] Cruz, ₱414,500.22[5] and Bauyon, ₱10,219.66 on September 25, 1995.[6]

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[1] PII managing director.

[2] Letter dated July 20, 1995. *Rollo*, p. 72.

Compare LABOR CODE, Art. 283. (Article 283 of the Labor Code requires the employer to serve a written notice on the workers and the Secretary of Labor at least one month before the effective date of termination. Moreover, in cases of closures or cessations or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one month pay or at least one-half pay for every year of service, whichever is higher. Thus, PII offered petitioners terms better than what was required by the law.)

[3] Letters dated September 15, 1995. *Rollo*, pp. 51-53.

[4]

Basic pay	₱19,800		
Allowance	6,300		
SEPARATION PAY	₱26,100 x 21 years	=	₱548,100.00

[5]

Basic pay	₱17,100		
Allowance	5,500		
SEPARATION PAY	₱22,600 x 20 years	=	₱452,000.00
Less: Cocolife loan			(37,499.78)
Amount received			₱414,500.22

[6]

Basic pay	₱8,300 x 6 years and 3 months	=	
SEPARATION PAY			₱51,879.00
Less: Cocolife loan			(41,659.34)
Amount received			₱10,219.66

Despite voluntarily availing of the SSP, petitioners filed a complaint for illegal dismissal and payment of separation pay, retirement benefits, leave pay and 13th month pay against PII, its president Masahiro Fukada and Fujita in the National Labor Relations Commission (NLRC) on September 27, 1995.[7]

Because petitioners filed the complaint two days after they were "terminated," the labor arbiter found respondents guilty of illegal dismissal. Accordingly, he awarded backwages, separation pay and attorneys' fees to petitioners.[8]

Respondents appealed.

The NLRC found that petitioners voluntarily accepted the terms of the SSP offered by PII. It noted that they negotiated to improve PII's offered SSP. Thus, the NLRC reversed the decision of the labor arbiter.[9]

Aggrieved, petitioners filed a petition for *certiorari*[10] in the Court of Appeals (CA) asserting that the NLRC committed grave abuse of discretion in reversing the decision of the labor

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[7] Docketed as NLRC NCR Case No. 00-0906558-95.

[8] Decision dated April 24, 1998 penned by Felipe P. Pati, *rollo*, pp. 76-83.

Petitioners appealed the April 24, 1998 decision in the National Labor Relations Commission (NLRC). The NLRC, however, found that said decision failed to dispose of Guerzon's claims for compensation, per diem and profit share. Thus, it remanded the case to labor arbiter in its June 17, 1999 decision.

Labor arbiter Pati, upon the motion of respondents, inhibited himself. The case was assigned to labor arbiter Dolores M. Peralta-Beley.

On February 28, 2003, labor arbiter Peralta-Beley rendered a decision affirming the findings of facts of labor arbiter Pati. Respondents were reinstated to their former positions without loss of seniority rights and privileges in addition to the payment of backwages from the time they were illegally dismissed up to the date of their actual reinstatement.

[9] Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay of the Second Division of the NLRC. Dated August 31, 2004. *Id*., pp. 152-167.

[10] Docketed as CA-SP G.R. No. 88737.

arbiter. The CA, however, dismissed the petition.[11] Petitioners moved for reconsideration but it was denied.[12]

Hence, petitioners availed of this recourse contending that the CA erred in affirming the decision of the NLRC. Respondents allegedly failed to prove that PII had been incurring losses to justify its reorganization. They claimed they were dismissed without just or authorized cause.

We deny the petition.

Petitioners held responsible positions in PII. Employees of their educational backgrounds and professional standing do not easily relinquish their legal rights unless they intend to.[13] In fact, petitioners even bargained to improve the terms of the SSP and, after successfully doing so, voluntarily resigned from PII. [14]

Consequently, whether the streamlining of PII's operations constituted an authorized cause for petitioners' termination became immaterial in view of their voluntary resignation.[15]

ACCORDINGLY, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales,[*] *Nachura,*[**] and *Leonardo-de Castro, JJ.,* concur.

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[11] Decision penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Arturo D. Brion (now a member of this Court) of the Third Division of the Court of Appeals. Dated August 24, 2005. *Rollo,* pp. 26-34.

[12] Resolution dated October 20, 2005. *Id.,* p. 44.

[13] *Globe Telecom v. Crisologo*, G.R. No. 174644, 10 August 2007, 529 SCRA 811, 818.

[14] *Samaniego v. NLRC*, G.R. No. 93095, 3 June 1991, 198 SCRA 111, 118-119.

[15] *Id.*

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[**] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 518.

SECOND DIVISION

[G.R. No. 170738. September 12, 2008]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **MARCOPPER MINING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER; EXCEPTIONS; WHERE FINDINGS NOT SUPPORTED BY SUFFICIENT EVIDENCE; CASE AT BAR. — As a rule, only questions of law are entertained by this Court in petitions for review on *certiorari* under Rule 45. It is not our function to analyze or weigh all over again the evidence presented. It is a settled doctrine that in a civil case, final and conclusive are the factual findings of the trial court, but only **if supported by clear and convincing evidence** on record. Both the RTC and the Court of Appeals gave credence to the testimonies of Marcopper President Atty. Teodulo C. Gabor, Jr. and Mr. Teodoro G. Bernardino, a member of the Board of Directors of Marcopper. True, findings by the trial court as to the credibility of witnesses are accorded the greatest respect, and even finality by the appellate courts, since the former is in a better position to observe their demeanor as well as their deportment and manner of testifying during the trial. However, in this case, not only was there inadequate evidence to prove Marcopper's assertions, the lower courts also overlooked certain significant facts which contradict the assertions of Marcopper's witnesses.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES. — Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

3. ID.; ID.; STAGES OF CONTRACTS.— In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; EVIDENCE REQUIRED IN CIVIL CASES; ELUCIDATED. — Marcopper has failed to establish a cause of action, defined as an act or omission by which a party violates a right of another. In *Jison v. Court of Appeals*, this Court outlined the quantum of evidence required in order to sufficiently assert one's claim in civil cases, thus: The foregoing discussion, however, must be situated within the general rules on evidence, in light of the burden of proof in civil cases, *i.e.*, preponderance of evidence, and the shifting of the burden of evidence in such cases. Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth. In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Quasha Ancheta Peña & Nolasco for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated June 6, 2005 and the Resolution[2] dated December 8, 2005, of the Court of Appeals in CA-G.R. CV No. 77594. The appellate court had affirmed with modification the Decision[3] dated July 2, 2002 of the Regional Trial Court (RTC) of Makati City, Branch 57, in Civil Case No. 98-1661. The RTC ordered the petitioner Rizal Commercial Banking Corporation (RCBC) to execute a Deed of Partial Release from Mortgage of six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel, and shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club in favor of respondent Marcopper Mining Corporation (Marcopper).

The facts, culled from the records, are as follows:

To finance its acquisition of 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel, Marcopper obtained a loan from RCBC in the amount of US$13.7 Million. As security for the loan, Marcopper executed in favor of RCBC a Deed of Chattel Mortgage[4] dated April 23, 1996 of the 12 Rig Haul Trucks and one Demag Hydraulic Excavator Shovel and a Deed of Pledge[5] dated August 29, 1996 covering shares of stock of the Baguio Country Club, Canlubang Golf and Country Club, Philippine Columbian Association, and Puerto Azul Beach and Country Club. Later, Marcopper likewise delivered to RCBC

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[1] *Rollo*, pp. 53-71. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine concurring.

[2] *Id.* at 73-74.

[3] *Id.* at 75-98. Penned by Judge Reinato G. Quilala.

[4] Records, pp. 178-181.

[5] *Id.* at 184-185.

an additional Deed of Pledge[6] dated September 9, 1997, covering one share of stock in the Philippine Columbian Association.

Sometime in 1996, a restructuring of the loan was agreed upon by RCBC and Marcopper. In view of its inability to pay the loan, Marcopper, in a letter[7] dated July 1, 1997, proposed two options to RCBC: (1) to initiate foreclosure of the mortgaged assets and treat the deficiency as an unsecured creditor's claim against Marcopper's remaining assets; or (2) to accept the assignment of a Forbes Park property owned by Marcopper comprising 2,437 square meters and covered by TCT No. 321269[8] (Forbes Park property) as partial payment of the loan and restructure the payment of the balance over a period of two years. The letter stated:

x x x x x x x x x

Based on the foregoing, we foresee two (2) possible options for you, namely:

1) Initiate a foreclosure on the mortgaged assets, thereby realizing maximum cash proceeds of about $11.6 Million. The balance will have to be relegated to the rank of unsecured obligations whose repayment will solely depend on the timing and extent of cash proceeds to be generated from the disposal of the company's assets, or

2) Accept our proposal which calls for the involvement of our major shareholders.

The Company may request the involvement of our major shareholders who could ensure a definite repayment plan for the principal exposure of $13.7 Million. Said repayment plan will consist of the following components:

a) Implementation of the assignment of the Forbes Park property for the previously agreed amount of ₱235 Million;

b) Payment of the amount of ₱71 Million, being the peso equivalent of the difference between $11.6 Million and

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[6] *Id.* at 182-183.

[7] *Id.* at 72-75.

[8] *Rollo*, p. 75.

$8.9 Million (dollar equivalent of ₱235 Million) over a period of one (1) year on a quarterly basis, plus interest; and

c) Payment of the balance of ₱55.4 Million (being the peso equivalent of the difference between the entire principal obligation of $13.7 Million and $11.6 Million which is the sum of Items a) and b) above, over a period of two (2) years payable quarterly.

x x x x x x x x x

We believe that Option 2 above guarantees your full recovery of our principal obligation to you. Since our major shareholders have already indicated their willingness to support this repayment scheme, may we request you to accept this option for immediate implementation.[9]

x x x x x x x x x

Representatives from both parties met on July 3, 1997,[10] to discuss Marcopper's proposal.

On July 8, 1997, Marcopper sent a letter to RCBC to confirm the agreements reached and to increase the principal amount under the repayment scheme of Option 2 as RCBC had raised concern about the accrued interest. The letter reads:

July 8, 1997

RIZAL COMMERCIAL BANKING CORP.
Sen. Gil Puyat Avenue
Makati City

Attention: **MR. FILADELFO ROJAS, Jr.**
Senior Vice-President

Gentlemen:

Subject: Marcopper FCDU Loan

This is to summarize our discussion and the points agreed upon during our meeting last July 3, regarding our payment proposal made in our letter to you of July 1.

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[9] Records, pp. 73-74.

[10] *Id.* at 76.

In the meeting, Mr. Joost Pekelharing and I have reiterated Marcopper's proposal that with the involvement of the company's major shareholders, a definite repayment plan on the principal amount of your exposure to us be ensured.

While you raised your concern about the accrued interest, we had to explain that it may be unfair to overburden the company's major shareholders who are already overexposing themselves, if only to ensure that you will be repaid to the extent of your principal exposure to us. For this reason, we requested that said accrued interest be waived.

We then agreed on the repayment of your principal exposure to us as follows:

1) The principal amount was to be revised, from the original principal of $13.7 million to $14.327 million, which includes interest that has been capitalized;

2) Implementation of the assignment of the Forbes Park property for the agreed amount of ₱235 million, equivalent to about $8,901,515;

3) Payment of the amount of $2,698,485 over a period of one (1) year payable quarterly plus interest; and

4) Payment of the balance of $2,727,000 over a period of two (2) years, payable quarterly, without interest.

It was emphasized that the restructured loans will be guaranteed by the company's major shareholders.

We believe the foregoing captures the essence of what transpired in our meeting. May we therefore, request you to indicate your conforme in the space provided for below.

Thank you.

Very truly yours,

(Sgd.)
NICANOR L. ESCALANTE
Treasurer

Conforme:
Director/SVP SUSANNE Y. SANTOS SVP FILADELFO S. ROJAS, JR.

(Sgd.) (Sgd.)
Rizal Banking Corporation
(Authorized Signatories)[11]

[11] *Id.* at 76-77.

RCBC Director/Senior Vice-President Susanne Y. Santos and Senior Vice-President Filadelfo S. Rojas, Jr. signed their conformity to the above letter.

In a letter dated July 31, 1997, Marcopper forwarded four documents to RCBC thus:

31 July 1997

Rizal Commercial Banking Corporation
Sen. Gil J. Puyat Avenue, Makati City

Attention : Ms. Ma. Felisa Banzon
Vice-President

Gentlemen:

Re: Deed of Release from Mortgage

In connection with the transfer of our Forbes Park Property in your favor, we are transmitting to you herewith the following documents:

1. Deed of Assignment [of the Forbes Park property] dated August 1, 1997, for BIR purposes;
2. Deed of Partial Release from Mortgage signed by the Attorney-in-Fact of MR Holdings Limited releasing from their mortgage the above-mentioned property; and
3. Copy of Secretary's Certificate of a resolution passed by the Board of Directors of MR Holdings Limited appointing as Attorney-in-Fact, Atty. Alma D. Fernandez-Mallonga. The original of said Secretary's Certificate is with Atty. Mallonga and will be presented to the Register of Deeds when required.
4. Deed of Release from Mortgage to be signed by RCBC involving the release from your mortgage six (6) Units Rig Trucks and one (1) unit Demag Shovel.

Kindly note that the release of the above-mentioned property by MR Holdings Limited from their mortgage was made on the condition that a substitution thereof with other unencumbered and free assets and properties of the mortgagor under a second Addendum to Mortgage be effected. Inasmuch as our only free and unencumbered

assets will be those that will be released by you under the Deed of Release from Mortgage mentioned under Item No. 4 above, may we therefore request that your authorized signatories sign as soon as possible the said Deed of Release from Mortgage.

Thank you for your kind assistance and cooperation

Very truly yours,

(Sgd.)
NICANOR L. ESCALANTE
Treasurer[12]

RCBC did not sign the Deed of Release from Mortgage of the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel. Instead, it returned the unsigned deed to Marcopper. However, it signed the Deed of Assignment of the Forbes Park property.

On August 22, 1997, Marcopper sent RCBC another letter transmitting additional documents.

August 22, 1997

MS. MARISSA BANZON
Vice-President
RIZAL COMMERCIAL BANKING CORPORATION
Sen. Gil J. Puyat Avenue
Makati City

Dear Marissa,

In connection with the completion of documentation of the transfer of our Forbes Park property in your favor, we are transmitting to you herewith our Promissory Notes for US$2,698,485.00 and US$2,727,000.00. These amounts correspond to the restructured balance of our outstanding loan with you after effecting our partial payment to you through the abovementioned assignment of our Forbes Park property.

In addition, we are sending you herewith the Surety Agreements duly executed by Mr. Teodoro G. Bernardino as surety corresponding to the restructured obligation to you. As earlier discussed with you, kindly release your letter addressed to Mr. Teodoro G. Bernardino, clarifying certain aspects of the Surety Agreement he signed in your favor.

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[12] *Id.* at 14.

Thank you for your kind cooperation.

Best regards.

Very truly yours,

(Sgd.)
NICK L. ESCALANTE
Treasurer[13]

On August 26, 1997, said promissory notes, which represent the restructured balance of Marcopper's loan, were signed by both parties. As stated above, Marcopper also delivered to RCBC an additional Deed of Pledge dated September 9, 1997 over one share of the Philippine Columbian Association.

On September 12, 1997, RCBC Vice-President Ma. Felisa R. Banzon wrote Marcopper the following letter:

September 12, 1997

MARCOPPER MINING CORP.
6th Floor, V. Madrigal Bldg.
6793 Ayala Avenue,
Makati City

Attention: **MR. NICANOR L. ESCALANTE**
Treasurer

Gentlemen:

As you are aware, we have effected the transfer of ownership of the Forbes property which you used to partially settle your past due obligations with the bank. You have previously requested the release of six (6) Unit Rig trucks and one (1) Demag Shovel. However, as I have previously informed you, we first need to work on some details in relation to the dacion. We still need to get approval for your request thus no commitment can be made at this time.

Very truly yours,

(Sgd.)
MA. FELISA R. BANZON
Vice-President[14]

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[13] *Id.* at 79.

[14] *Id.* at 83.

On November 24, 1997, Marcopper stressed to RCBC the need for RCBC to release the mortgaged properties. Marcopper stated that RCBC was well aware that MR Holdings, Ltd. agreed to release its lien on the Forbes Park property upon Marcopper's assurance that RCBC will release from mortgage the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel. In said letter, Marcopper for the first time also stated that pledges over the club shares were to be released as well. The properties to be released from mortgage and pledge were to be used as substitute security in favor of MR Holdings, Ltd. The letter reads:

November 24, 1997

MR. CESAR VIRATA
Chairman of the Board
RIZAL COMMERCIAL BANKING CORPORATION
Sen. Gil J. Puyat Avenue
Makati City

Dear Mr. Virata,

We are writing you in connection with the recently completed documentation on the assignment of our Forbes Park property in your favor, representing partial settlement of our loan obligations to you.

As you may be aware, the Forbes Park property had, up to the time of assignment to you, been part of a pool of assets mortgaged with MR HOLDINGS, LTD. (MR Holdings), successor-in-interest of the Asian Development Bank. MR Holdings agreed to release this asset from their mortgage only upon our assurance that RCBC will release as well from their mortgage, and we would, without delay, turn over to MR Holdings, six (6) units Rig Trucks and one (1) unit Demag Shovel.

We, likewise, committed to MR Holdings that we will additionally mortgage to them some club shares, which we earlier pledged to you, and which we expected to be released by you, after the restructuring of our loan obligations with you. As you very well know, the restructured balance of our obligations with you are covered by a surety issued by Mr. Teodoro G. Bernardino, in addition to the equipment to be retained by you as collateral.

Up to now, however, the abovementioned equipment have not yet been released from your mortgage, nor have the pledged club shares been turned over to us. We have been advised by RCBC that the non-release of the abovementioned assets is caused by a pending issue between RCBC and its assigned Central Bank examiner, involving the restructuring agreement entered into between RCBC and Marcopper.

Considering the pressure being exerted on us by MR Holdings on the immediate compliance of our commitment to deliver the abovementioned assets to them, may we, therefore, seek your kind assistance in the release of said assets from RCBC.

Thank you.

Very truly yours,

MARCOPPER MINING CORP.

(Sgd.)
JOOST PEKELHARING
Chairman of the Board[15]

In a letter[16] dated December 15, 1997, RCBC informed Marcopper that its Executive Committee had approved the release of five Rig Haul Trucks subject to the condition that Marcopper pays the first amortization which fell due on November 24, 1997. On December 17, 1997, RCBC sent a second letter[17] to Marcopper informing the latter that it has approved the release from mortgage of the six Rig Haul Trucks and one Demag Hydraulic Excavator Shovel as well as the release from pledge of the club shares, also subject to the same condition. Marcopper failed to settle the obligations which fell due on November 24, 1997, February 23, 1998 and May 25, 1998. RCBC sent to Marcopper and its surety Mr. Teodoro G. Bernardino a letter dated July 1, 1998, declaring the whole obligation under the non-negotiable promissory notes due and payable and demanding that they pay the same. Marcopper and its surety refused to pay.

[15] *Id.* at 197-198.

[16] *Id.* at 199.

[17] *Id.* at 200.

Instead, on July 16, 1998, Marcopper filed a complaint [18] for Specific Performance with Damages and with Prayer for the Issuance of a Writ of Preliminary Injunction against RCBC before the RTC of Makati. Marcopper alleged that it agreed to assign the Forbes Park property to RCBC to be credited to Marcopper's account in the amount of US$8,901,515 on the condition that RCBC will execute a Deed of Release from Mortgage of the six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel and the club shares of the Baguio Country Club, Canlubang Golf and Country Club, Puerto Azul Beach and Country Club, and Philippine Columbian Association which it failed to do. Marcopper prayed that RCBC be ordered to execute a deed of partial release of mortgage and pledge, desist from declaring Marcopper's promissory notes as due and demandable, and pay damages.

In its Answer with Compulsory Counterclaim, RCBC asserted that it did not have an obligation to release any mortgage or pledge because the parties did not have any agreement for RCBC to do so. As its counterclaims, RCBC prayed that Marcopper be ordered to pay the principal amount of its promissory notes, the interest, penalties, and attorney's fees stipulated therein, and to compensate RCBC for the damages it suffered as a result of the filing of the case.

In a Decision dated July 2, 2002, the RTC ruled in favor of Marcopper:

> WHEREFORE, premises considered, judgment is hereby [rendered], as follows:
>
> 1. Ordering defendant Rizal Commercial Banking Corporation to execute a Deed of Partial Release from Mortgage, in favor of the plaintiff, the following properties:
>
> a) six (6) units Rig [Haul] trucks
>
> b) one (1) Demag Excavator shovel and for said defendant to release from pledge, in favor of the plaintiff, the following:
>
> a) one (1) share of Baguio Country Club under Certificate No. 3753;

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

b) one (1) share of Canlubang Golf and Country Club under Certificate No. 1759;

c) one (1) share of Philippine Columbian Club Association under Certificate No. 1461;

d) one (1) share of Philippine Columbian Club Association under Certificate No. 1486; and

e) one (1) share of Puerto Azul Beach and Country Club under Certificate No. 534.

2. Ordering defendant to cease and desist from enforcing and collecting on the non-negotiable Promissory Note Nos. 21-3699 and 21-37997 including the comprehensive surety agreements of Mr. Teodoro Bernardino, the same not being due and enforceable against the plaintiff and Teodoro Bernardino.

3. Ordering defendant to pay Marcopper the amount equivalent to 30% of the value as of 1997 of the six (6) units Rig trucks, Demag Excavator shovel and the club shares mentioned in [the] preceding par. 1 hereof, as compensatory damages; and [₱500,000.00] as exemplary damages.

The compulsory counterclaims of defendant are dismissed for lack of merit.

No costs.

SO ORDERED.[19]

The Court of Appeals affirmed with modification the trial court's ruling. Thus:

WHEREFORE, premises considered, the decision of Branch 57, Regional Trial Court of Makati in Civil Case No. 98-1661 is hereby **AFFIRMED** with Modifications in items 2 and 3 of the same:

2. Enforcement of Promissory Notes 21-3697 and 21-3797 is hereby SUSPENDED until the RELEASE of properties specified in the trial court's decision dated July 2, 2002.

3. RCBC is held liable for actual and compensatory damages equivalent to thirty percent (30%) of the value of the equipment not released to answer for the depreciation these equipment

[19] *Rollo*, pp. 97-98.

underwent due to the passage of time and the profit [Marcopper] could have realized if aforementioned release was effected on time. RCBC is likewise held liable for exemplary damages in the reduced amount of One Hundred Thousand (₱100,000.00) Pesos.

The dismissal of defendant's compulsory counterclaims is AFFIRMED.

SO ORDERED.[20]

RCBC's motion for reconsideration was denied. Hence, the instant appeal by RCBC. RCBC alleges that:

I.

THE COURT OF APPEALS ERRED IN FINDING THAT RCBC WAS LEGALLY OBLIGATED TO RELEASE THE SUBJECT MORTGAGE AND PLEDGE BASED ON HEARSAY, IRRELEVANT, AND THUS INADMISSIBLE EVIDENCE, AND IN DISREGARDING THE UNDISPUTED AND MATERIAL FACTS, WHICH IF PROPERLY CONSIDERED, WOULD JUSTIFY A CONTRARY CONCLUSION.

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II.

THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN GIVING MORE WEIGHT AND CREDENCE TO THE HEARSAY, DOUBTFUL, TENUOUS, AND IRRELEVANT, TESTIMONIES OF MARCOPPER'S WITNESSES, AND IN DISREGARDING THE CATEGORICAL TESTIMONIES OF MARIA FELI[S]A R. BANZON AND MERLYN E. DUEÑAS, BOTH OF WHOM WERE PRESENT AT THE PARTIES' MEETING ON 3 JULY 1997, PROVING THAT THERE WAS NO COMMITMENT, MUCH LESS AGREEMENT, TO RELEASE THE SUBJECT MORTGAGE AND THE PLEDGE.

III.

THE COURT OF APPEALS ERRED IN AWARDING DAMAGES TO MARCOPPER BASED ON MANIFESTLY MISTAKEN, ABSURD, OR IMPOSSIBLE INFERENCES AND MERE SPECULATION.

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[20] *Id.* at 69-70.

IV.

THE COURT OF APPEALS ERRED IN DISMISSING RCBC'S COUNTERCLAIMS.[21]

x x x x x x x x x

Simply, the issue is: Did the parties agree that RCBC will execute a Deed of Release from Mortgage and Pledge of the six Rig Haul Trucks, one Demag Hydraulic Excavator Shovel and shares of stock in exchange for the assignment by Marcopper to RCBC of the Forbes Park property?

RCBC contends that a mortgage obligation is one and indivisible and thus, Marcopper cannot demand the release of any portion of its mortgaged and pledged properties unless and until it has fully paid its loan with RCBC, notwithstanding its partial payment of the loan through a *dacion en pago* of its Forbes Park property to RCBC. The only way RCBC would be bound to release the mortgage and pledge is if it had contracted to do so. However, Marcopper failed to establish that RCBC agreed and legally bound itself to effect release of the subject mortgage and pledge. RCBC stressed that Marcopper merely presented hearsay and/or irrelevant evidence.[22]

On the other hand, Marcopper counters that there was an agreement between the parties for RCBC to release the mortgage as proven by the testimonies of its witnesses which were found to be credible. Marcopper argues that such evidence constitutes findings of fact of the trial court and Court of Appeals and that when supported by substantial evidence, findings of fact of the trial court as affirmed by the Court of Appeals are conclusive and binding on the Supreme Court.[23]

The petition is impressed with merit.

As a rule, only questions of law are entertained by this Court in petitions for review on *certiorari* under Rule 45. It is not

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[21] *Id.* at 22-24.

[22] *Id.* at 25.

[23] *Id.* at 178-179.

our function to analyze or weigh all over again the evidence presented. It is a settled doctrine that in a civil case, final and conclusive are the factual findings of the trial court, but only **if supported by clear and convincing evidence** on record.[24]

Both the RTC and the Court of Appeals gave credence to the testimonies of Marcopper President Atty. Teodulo C. Gabor, Jr. and Mr. Teodoro G. Bernardino, a member of the Board of Directors of Marcopper. True, findings by the trial court as to the credibility of witnesses are accorded the greatest respect, and even finality by the appellate courts, since the former is in a better position to observe their demeanor as well as their deportment and manner of testifying during the trial.[25] However, in this case, not only was there inadequate evidence to prove Marcopper's assertions, the lower courts also overlooked certain significant facts which contradict the assertions of Marcopper's witnesses.

A review of the written exchanges between the parties shows no written agreement was ever executed by RCBC and Marcopper for RCBC to execute a partial release of mortgage and pledge upon assignment to it of the Forbes Park property. The July 1, 1997 letter from Marcopper Treasurer Nicanor L. Escalante to RCBC merely listed two options of payment of Marcopper's loan to RCBC while the July 8, 1997 letter from Marcopper to RCBC modified the terms of payment as to the second option listed in the July 1, 1997 letter. The next written communication between the parties was the July 31, 1997 where Marcopper forwarded the Deed of Release of Mortgage which it requested RCBC to sign.

Even the letter[26] dated November 24, 1997 from Marcopper Chairperson of the Board Joost Pekelharing to RCBC makes no allusion to a written contract. The letter merely stated MR Holdings agreed to release the Forbes Park property **upon**

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[24] *Vibram Manufacturing Corporation v. Manila Electric Company*, G.R. No. 149052, August 9, 2005, 466 SCRA 178, 183.

[25] *Domingo v. Domingo*, G.R. No. 150897, April 11, 2005, 455 SCRA 230, 238.

[26] Records, pp. 197-198.

Marcopper's assurance that RCBC will release from mortgage six units Rig Haul Trucks and one unit Demag Hydraulic Excavator Shovel.

The existence of the alleged condition asserted by Marcopper was therefore to be gleaned primarily from the testimonies of its witnesses who asserted that Marcopper and RCBC had agreed on July 3, 1997 to the release of the mortgage and pledge as a condition to the assignment of the Forbes Park property and ultimately the payment of the promissory notes. However, we note that the first time that Marcopper ever mentioned the release of the pledges of club shares was in its letter dated November 24, 1997. Before that, Marcopper requested the release of the mortgage on the Rig Haul Trucks and one unit Demag Hydraulic Excavator Shovel only. Marcopper's letter to RCBC dated July 8, 1997, which confirmed the agreements between the parties during their July 3, 1997 meeting, did not state that RCBC committed to release the mortgage and pledge, a condition which Marcopper alleged to be a material condition and which would ordinarily be included in the written confirmation had it been agreed upon. Also, on September 9, 1997, Marcopper executed a deed of pledge of one additional share of stock of the Philippine Columbian Association. If it were true, as asserted by Marcopper's witnesses, that RCBC had committed to release the mortgage and pledge during the July 3, 1997 meeting, Marcopper would not have delivered the additional pledge after the Forbes Park property had been assigned to RCBC. That it did so proves that the assignment of the Forbes Park property was not made on the condition Marcopper claims.

Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law.[27] Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[28]

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[27] CIVIL CODE OF THE PHILIPPINES, Article 1315.

[28] *Id.*, Article 1159.

In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[29]

Based on the records, RCBC agreed to a partial release of the mortgaged properties only in its letters dated December 15, 1997[30] and December 17, 1997[31] but it was clearly on the condition that Marcopper first pay the first amortization which fell due on November 24, 1997.

Marcopper cannot renege on its obligation to pay the promissory notes under the pretext that there was a previous agreement between the parties for RCBC to effect a partial release of mortgage and pledge upon assignment to it of the Forbes Park property.

Marcopper has failed to establish a cause of action, defined as an act or omission by which a party violates a right of another.[32]

In *Jison v. Court of Appeals*,[33] this Court outlined the quantum of evidence required in order to sufficiently assert one's claim in civil cases, thus:

> The foregoing discussion, however, must be situated within the general rules on evidence, in light of the burden of proof in civil cases, *i.e.*, preponderance of evidence, and the shifting of the burden of evidence in such cases. Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil

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[29] *Swedish Match, AB v. CA*, G.R. No. 128120, October 20, 2004, 441 SCRA 1, 18.

[30] Records, p. 86.

[31] *Id.* at 87.

[32] 1997 RULES OF COURT, Rule 2, Section 2.

[33] G.R. No. 124853, February 24, 1998, 286 SCRA 495, 532.

case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.[34]

Given the existence of facts clearly militating against Marcopper's claim and the absence of any written agreement between the parties, the testimonies of witnesses who happen to be officers of Marcopper and whose testimonies should naturally favor Marcopper are insufficient to establish its cause of action. Marcopper's complaint should have been dismissed by the trial court.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated June 6, 2005 and the Resolution dated December 8, 2005 of the Court of Appeals in CA-G.R. CV No. 77594 are *REVERSED* and *SET ASIDE*. Marcopper is directed to pay RCBC the following amounts expressly stipulated in the Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797:

1. US$5,425,485.00 as the total principal amount due under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797, including the interest due on US$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% per annum until fully paid.

2. Penalty equivalent to 36% per annum of the amount due and unpaid under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797 until fully paid; and

[34] *Social Security System v. Chaves*, G.R. No. 151259, October 13, 2004, 440 SCRA 269, 277.

3. Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied. It may, however, exercise its rights, in accordance with law, to foreclose on the properties covered. No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170852. September 12, 2008]

SPOUSES NOE and CLARITA QUIAMCO, *petitioners, vs.* **CAPITAL INSURANCE & SURETY CO., INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SURETYSHIP; NOT SUBJECT TO A SUSPENSIVE CONDITION; PRESENT IN CASE AT BAR. — There is no dispute that the parties entered into a contract of suretyship wherein respondent as surety bound itself solidarily with petitioners (the principal debtors) to fulfill an obligation. The obligation was to pay the monetary award in the labor case should the decision become final and executory against petitioners. Contracts are perfected by mere consent. This is manifested by the meeting of the offer and the acceptance upon the object and cause which are to constitute the contract. Here, the object of the contract was the issuance of the bond. The cause or consideration consisted of the premiums paid. The bond was issued after petitioners complied with the requirements. At this point, the contract of suretyship was

perfected. Petitioners cannot insist that the contract was subject to a suspensive condition, that is, the stay of the judgment of the labor arbiter. This was not a condition for the perfection of the contract but merely a statement of the purpose of the bond in its "whereas" clauses. Aside from this, there was no mention of the condition that before the contract could become valid and binding, perfection of the appeal was necessary. If the intention was to make it a suspensive condition, then the parties should have made it clear in certain and unambiguous terms.

2. ID.; ID.; ID.; A SURETY IS CONSIDERED TO BE IN THE SAME FOOTING AS THE PRINCIPAL DEBTOR IN RELATION TO WHATEVER IS ADJUDGED THE LATTER. — From the moment the contract is perfected, the parties are bound to comply with what is expressly stipulated as well as with what is required by the nature of the obligation in keeping with good faith, usage and the law. A surety is considered in law to be on the same footing as the principal debtor in relation to whatever is adjudged against the latter. Accordingly, as surety of petitioners, respondent was obliged to pay on the bond when a writ of execution was served on it. Consequently, it now has the right to seek full reimbursement from petitioners for the amount paid. It was never respondent's obligation to inquire about the deadline for which the bond was being issued. It was the duty of petitioners to make sure it was filed on time. The delay in filing the bond was purely the result of petitioners' negligence or oversight. They should bear the consequences.

APPEARANCES OF COUNSEL

Florido & Largo Law Offices for petitioners.
Maderazo & *Associates* for respondent.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the August 25, 2005 decision[2] and November 24, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 74390.

Petitioner spouses Noe and Clarita Quiamco are husband and wife engaged in the sea transportation business. On April 30, 1997, a decision in a labor case[4] was rendered against Clarita as representative of Sto. Niño Ferry Boat Services. Petitioners received the decision on May 7, 1997.[5]

Petitioners then applied for a supersedeas bond with respondent Capital Insurance & Surety Co., Inc., a surety and non-life insurance company. This bond was required in order to perfect their appeal to the National Labor Relations Commission (NLRC). Respondent required petitioners to do the following: (1) to issue and deliver to it an undated check in the amount equivalent to that of the supersedeas bond which it would issue; (2) to execute a supplementary counter-guaranty with chattel mortgage over the sea vessel M/L Gretchen 2 owned by petitioners and to surrender their original copy of certificate of ownership over the vessel; (3) to execute an indemnity agreement wherein

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Sesinando E. Villon and Enrico A. Lanzanas of the Nineteenth Division of the Court of Appeals; *rollo*, pp. 16-23.

[3] Associate Justice Villon was replaced by Associate Justice Pampio A. Abarintos in the Special Former Nineteenth Division; *id.*, p. 57.

[4] Docketed as RAB Case Nos. 06-03-0223-92 and 06-04-10334-92. The complaint was for illegal dismissal and the decision was rendered by Labor Arbiter Ray Alan T. Drilon of the Regional Arbitration Branch, Branch VI, Bacolod City in favor of Lakas ng Nagkakaisang Manggagawa-PAFLU; *id.*, p. 27.

[5] *Id.*, p. 44. This was the date stated in the resolution of the National Labor Relations Commission. However, in the decision of the Regional Trial Court, the date stated was May 5, 1997; *id.*, p. 49.

petitioners would agree to indemnify respondent all damages it might sustain in its capacity as surety and (4) to pay the premiums. Except for the original copy of the certificate of ownership of M/L Gretchen 2, these requirements were complied with.[6]

Accordingly, the bond was issued on May 23, 1997 and delivered to petitioners who filed it in the NLRC on May 24, 1997.[7]

On July 16, 1997, the NLRC dismissed the appeal for petitioners' failure to post the bond within 10 days from receipt of the decision (May 7, 1997).[8] This made the decision in the labor case final against them.

On June 17, 1998, a writ of execution for the amount of ₱461,514.67 was served by the sheriff of the NLRC on respondent to collect on the supersedeas bond. This was to fully satisfy the judgment amount in the labor case. Respondent paid to the NLRC the amount guaranteed by the bond. It notified petitioners and forthwith deposited the undated check. It was, however, dishonored because the account was already closed.[9]

On December 3, 1998, respondent filed in the Regional Trial Court (RTC) of Cebu City, Branch 22,[10] a complaint for sum of money and damages with prayer for a writ of preliminary attachment against petitioners. The RTC ruled in favor of respondent. It ordered petitioners to pay to respondent the amount of ₱461,514.67 plus legal interest of 6% per annum, attorney's fees equivalent to 10% of ₱461,514.67 and ₱10,000 as litigation expenses.

On appeal, the CA affirmed the RTC's decision but deleted the award of attorney's fees and litigation expenses for lack

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[6] *Id.*, pp. 17-18.

[7] *Id.*, p. 44.

[8] *Id.* Art. 223 of the Labor Code.

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

[10] Docketed as Civil Case No. CEB-23049; *id.*, p. 47.

of basis. Reconsideration was denied in a resolution dated November 24, 2005. The CA agreed with the RTC that the surety agreement between petitioners and respondent had been perfected. Its perfection was not dependent on the acceptance by the NLRC of the appeal of petitioners in the labor case. Thus, respondent correctly paid the indebtedness of petitioners.[11]

Hence this petition raising two issues: (1) whether the surety agreement was perfected and (2) whether petitioners are liable to respondent.

Petitioners argue that one of the conditions of the bond was to stay the execution of the judgment in the labor case:

"WHEREAS, [petitioners] being dissatisfied with the decision/judgment desired to stay and suspend the execution of the same pending appeal;

WHEREAS, **in order to stay the execution of the above-mentioned decision/judgment**, [petitioners] are willing to post bond xxxx"[12] (Emphasis supplied)

Therefore, they insist that the surety agreement was not perfected because the execution of the judgment was not stayed considering that the NLRC rejected the bond for being posted out of time and dismissed the appeal.

We disagree.

There is no dispute that the parties entered into a contract of suretyship wherein respondent as surety bound itself solidarily with petitioners (the principal debtors) to fulfill an obligation.[13]

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[11] *Id.*, pp. 20-22.

[12] *Id.*, p. 103.

[13] R.B. Jurado, Civil Law Reviewer, p. 1009 (19th ed. 1999). Article 2047 of the Civil Code provides:

"Article 2047. By guaranty, a person, called the guarantor binds himself to the creditor to fulfill the obligation of the principal in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship." (Emphasis supplied)

The obligation was to pay the monetary award in the labor case should the decision become final and executory against petitioners.

Contracts are perfected by mere consent. This is manifested by the meeting of the offer and the acceptance upon the object and cause which are to constitute the contract.[14] Here, the object of the contract was the issuance of the bond.[15] The cause or consideration consisted of the premiums paid. The bond was issued after petitioners complied with the requirements. At this point, the contract of suretyship was perfected.

Petitioners cannot insist that the contract was subject to a suspensive condition,[16] that is, the stay of the judgment of the labor arbiter. This was not a condition for the perfection of the contract but merely a statement of the purpose of the bond in its "whereas" clauses. Aside from this, there was no mention of the condition that before the contract could become valid and binding, perfection of the appeal was necessary.[17] If the intention was to make it a suspensive condition, then the parties should have made it clear in certain and unambiguous terms.

From the moment the contract is perfected, the parties are bound to comply with what is expressly stipulated as well as with what is required by the nature of the obligation in keeping with good faith, usage and the law.[18] A surety is considered in law to be on the same footing as the principal debtor in

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The aforementioned provisions refer to Articles 1207 to 1222 of the Civil Code on "Joint and Solidary Obligations."

[14] CIVIL CODE, Arts. 1315 and 1319.

[15] An assurance of the performance of a particular principal obligation; *Destileria Limtuaco & Co., Inc. v. IAC*, G.R. No. 74369, 29 January 1988, 157 SCRA 706, 712.

[16] The condition is suspensive if the acquisition of rights depends upon the happening of an event which constitutes the condition (see CIVIL CODE, Art. 1181).

[17] *Oesmer v. Paraiso Development Corporation*, G.R. No. 157493, 5 February 2007, 514 SCRA 228, 242.

[18] CIVIL CODE, Art. 1315.

relation to whatever is adjudged against the latter.[19] Accordingly, as surety of petitioners, respondent was obliged to pay on the bond when a writ of execution was served on it. Consequently, it now has the right to seek full reimbursement from petitioners for the amount paid.[20]

Moreover, petitioners[21] signed an indemnity of agreement which contained the following stipulations:

INDEMNIFICATION: - To indemnify the SURETY for all damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature that the SURETY may at any time sustain or incur as a consequence of having become surety upon the above-mentioned bond, and to pay, **reimburse and make good to the SURETY,** its successors and assigns, **all sums or all money which it shall pay or become liable to pay by virtue to said bond** even if said payment/s or liability exceeds the amount of the bond. The indemnity for attorney's fees shall be twenty (20%) percent of the amount claimed by the SURETY, but in no case less than TWO THOUSAND PESOS (₱2,000.00), whether the SURETY's claim is settled judicially or extra-judicially.

INCONSTESTABILITY OF PAYMENT MADE BY THE SURETY: - **Any payment or disbursement made by the SURETY on account of the above-mentioned bond**, either in the belief that the SURETY was obligated to made (sic) such payment or in the belief that said payment was necessaery in order to avoid a greater loss or obligation for which the SURETY might be liable by virtue of the terms of the above-mentioned bond **shall be final, and will not be contested by the undersigned, who jointly and severally bind themselves to indemnity the SURETY for any such payment or disbursement**. (Emphasis supplied)

Undoubtedly, under these provisions, they are obligated to reimburse respondent.[22]

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[19] *Suico Rattan & Buri Interiors, Inc. v. CA*, G.R. No. 138145, 15 June 2006, 490 SCRA 560, 580-581, citing *International Finance Corporation v. Imperial Textile Mills, Inc.*, G.R. No. 160324, 15 November 2005, 475 SCRA 149, 161.

[20] *Escaño v. Ortigas, Jr.*, G.R. No. 151953, 29 June 2007, 526 SCRA 26, 45.

[21] Specifically, Clarita Quiamco; *rollo*, p. 83.

[22] *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*, G.R. No. 171820, 13 December 2007.

One final note. It was never respondent's obligation to inquire about the deadline for which the bond was being issued. It was the duty of petitioners to make sure it was filed on time. The delay in filing the bond was purely the result of petitioners' negligence or oversight. They should bear the consequences.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J., Carpio-Morales,[*] *Nachura,*[**] and *Leonardo-de Castro, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172129. September 12, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MIRANT PAGBILAO CORPORATION (Formerly SOUTHERN ENERGY QUEZON, INC.),** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND; STRICTLY CONSTRUED AGAINST THE TAXPAYER; RATIONALE. — Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation* would have it, the result of legislative grace. In

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[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[**] As replacement of Justice Adolfo S. Azcuna who is on official leave per Special Order No. 518.

such case, the claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. The return of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government. And as decisional law teaches, a claim for tax refund proper, as here, necessitates only the preponderance-of-evidence threshold like in any ordinary civil case.

2. ID.; VALUE ADDED TAX (VAT); INPUT TAX; THE LAW CONSIDERS A DULY-EXECUTED VAT INVOICE OR O.R. IS SUFFICIENT EVIDENCE TO SUPPORT A CLAIM FOR INPUT TAX CREDIT. — The CA, citing Sec. 110 (A) (1) (B) of the NIRC, held that OR No. 0189 constituted sufficient proof of payment of creditable input VAT for the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. Sec. 110 (A) (1) (B) of the NIRC pertinently provides: **Section 110.** *Tax Credits. —* A. *Creditable Input Tax. —* (1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: (a) Purchase or importation of goods: x x x (b) **Purchase of services on which a value-added tax has been actually paid**. Without necessarily saying that the BIR is precluded from requiring additional evidence to prove that input tax had indeed paid or, in fine, that the taxpayer is indeed entitled to a tax refund or credit for input VAT, we agree with the CA's above disposition. As the Court distinctly notes, the law considers a duly-executed VAT invoice or OR referred to in the above provision as sufficient evidence to support a claim for input tax credit. And any doubt as to what OR No. 0189 was for or tended to prove should reasonably be put to rest by the SGV report on which the CTA notably placed much reliance. The SGV report stated that "[OR] No. 0189 dated April 14, 1998 is for the payment of the VAT on the progress billings" from

Mitsubishi Japan "for the period April 7, 1993 to September 6, 1996 for the E & M Equipment Erection Portion of the Company's contract with Mitsubishi Corporation (Japan)."

3. ID.; ID.; TAX REFUND; WHEN CLAIM THEREOF IS FILED BEYOND THE PERIOD PROVIDED BY LAW; PRESENT IN CASE AT BAR. — The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads: (A) *Zero-rated or Effectively Zero-rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

4. ID.; ID.; ID.; THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECS. 204-c OR 299 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) APPLY ONLY TO INSTANCES OF ERRONEOUS PAYMENT OR ILLEGAL COLLECTION OF INTERNAL REVENUE TAXES.— To be sure, MPC cannot avail itself of the provisions of either Sec. 204 (C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204 (C) and 229 respectively provide: Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. — The Commissioner may — x x x (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. x x x Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. Notably, the above provisions also set a two-year prescriptive period, reckoned

from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

5. ID.; ID.; CREDITABLE INPUT VAT, CONSTRUED. — For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

6. ID.; ID.; ZERO-RATED TAXPAYER ENTITLED TO TAX REFUND OR TAX CREDIT; SUSTAINED. — In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, the Court explained the nature of the VAT and the entitlement to tax refund or credit of a zero-rated taxpayer: Viewed broadly, the VAT is a uniform tax . . . levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business as they pass along the production and distribution chain, the tax being limited only to the value added to such goods, properties or services by the seller, transferor or lessor. It is an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. As such, it should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax on consumption. In either case, though, the same conclusion is arrived at. The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method*. Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe . . . . Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports. If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes

> passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes. x x x **Zero-rated transactions** generally refer to the export sale of goods and supply of services. The **tax rate is set at zero**. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. **The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.**

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador Guevara and Associates for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Decision[1] dated December 22, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78280 which modified the March 18, 2003 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 6133 entitled *Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue* and ordered the Bureau of Internal Revenue (BIR) to refund or issue a tax credit certificate (TCC) in favor of respondent

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[1] *Rollo*, pp. 32-44. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa.

[2] *Id.* at 47-63. Penned by Presiding Judge Ernesto D. Acosta concurred in by Associate Judges Juanito C. Castañeda, Jr. and Lovell R. Bautista.

Mirant Pagbilao Corporation (MPC) in the amount representing its unutilized input value added tax (VAT) for the second quarter of 1998. Also assailed is the CA's Resolution[3] of March 31, 2006 denying petitioner's motion for reconsideration.

The Facts

MPC, formerly Southern Energy Quezon, Inc., and also formerly known as Hopewell (Phil.) Corporation, is a domestic firm engaged in the generation of power which it sells to the National Power Corporation (NPC). For the construction of the electrical and mechanical equipment portion of its Pagbilao, Quezon plant, which appears to have been undertaken from 1993 to 1996, MPC secured the services of Mitsubishi Corporation (Mitsubishi) of Japan.

Under Section 13[4] of Republic Act No. (RA) 6395, the NPC's revised charter, NPC is exempt from all taxes. In *Maceda v. Macaraig*,[5] the Court construed the exemption as covering both direct and indirect taxes.

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[3] *Id.* at 45-46.

[4] Sec. 13. Non-profit Character of the Corporation; **Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities**. – The [NPC] shall be non-profit and shall devote all its returns x x x as well as excess revenues from its operation, for expansion. To enable [NPC] to pay its indebtedness and obligations x x x [it] is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service x x x and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes x x x;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

[5] G.R. No. 88291, May 31, 1991, 197 SCRA 771.

In the light of the NPC's tax exempt status, MPC, on the belief that its sale of power generation services to NPC is, pursuant to Sec. 108(B)(3) of the Tax Code,[6] zero-rated for VAT purposes, filed on December 1, 1997 with Revenue District Office (RDO) No. 60 in Lucena City an Application for Effective Zero Rating. The application covered the construction and operation of its Pagbilao power station under a Build, Operate, and Transfer scheme.

Not getting any response from the BIR district office, MPC refiled its application in the form of a "request for ruling" with the VAT Review Committee at the BIR national office on January 28, 1999. On May 13, 1999, the Commissioner of Internal Revenue issued VAT Ruling No. 052-99, stating that "the supply of electricity by Hopewell Phil. to the NPC, shall be subject to the zero percent (0%) VAT, pursuant to Section 108 (B) (3) of the National Internal Revenue Code of 1997."

It must be noted at this juncture that consistent with its belief to be zero-rated, MPC opted not to pay the VAT component of the progress billings from Mitsubishi for the period covering April 1993 to September 1996—for the E & M Equipment Erection Portion of MPC's contract with Mitsubishi. This prompted Mitsubishi to advance the VAT component as this serves as its output VAT which is essential for the determination of its VAT payment. Apparently, it was only on April 14, 1998 that MPC paid Mitsubishi the VAT component for the progress billings from April 1993 to September 1996, and for which Mitsubishi issued Official Receipt (OR) No. 0189 in the aggregate amount of PhP135,993,570.

On August 25, 1998, MPC, while awaiting approval of its application aforestated, filed its quarterly VAT return for the second quarter of 1998 where it reflected an input VAT of PhP 148,003,047.62, which included PhP 135,993,570 supported

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[6] *Transactions Subject to Zero Percent (%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero-percent rate: x x x (3) Services rendered to persons whose exemption under special laws x x x effectively subjects the supply of such services to zero percent (0%) rate.

by OR No. 0189. Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, MPC filed on December 20, 1999 an administrative claim for refund of unutilized input VAT in the amount of PhP148,003,047.62.

Since the BIR Commissioner failed to act on its claim for refund and obviously to forestall the running of the two-year prescriptive period under Sec. 229 of the National Internal Revenue Code (NIRC), MPC went to the CTA via a petition for review, docketed as CTA Case No. 6133.

Answering the petition, the BIR Commissioner, citing *Kumagai-Gumi Co. Ltd. v. CIR*, [7] asserted that MPC's claim for refund cannot be granted for this main reason: MPC's sale of electricity to NPC is not zero-rated for its failure to secure an approved application for zero-rating.

Before the CTA, among the issues stipulated by the parties for resolution were, in gist, the following:

1. Whether or not [MPC] has unapplied or unutilized creditable input VAT for the 2nd quarter of 1998 attributable to zero-rated sales to NPC which are proper subject for refund pursuant to relevant provisions of the NIRC;

2. Whether the creditable input VAT of MPC for said period, if any, is substantiated by documents; and

3. Whether the unutilized creditable input VAT for said quarter, if any, was applied against any of the VAT output tax of MPC in the subsequent quarter.

To provide support to the CTA in verifying and analyzing documents and figures and entries contained therein, the Sycip Gorres & Velayo (SGV), an independent auditing firm, was commissioned.

The Ruling of the CTA

On the basis of its affirmative resolution of the first issue, the CTA, by its Decision dated March 18, 2003, granted MPC's

[7] CTA Case No. 4670, July 29, 1997.

claim for input VAT refund or credit, but only for the amount of PhP10,766,939.48. The *fallo* of the CTA's decision reads:

> In view of all the foregoing, the instant petition is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the reduced amount of ₱10,766,939.48, computed as follows:

Claimed Input VAT		₱148,003,047.62
Less: Disallowances		
a.) As summarized by SGV & Co. in its initial report (Exh. P)		
I. Input Taxes on Purchases of Services:		
1. Supported by documents other than VAT Ors	₱10,629.46	
2. Supported by photocopied VAT OR	879.09	
II. Input Taxes on Purchases of Goods:		
1. Supported by documents other than VAT invoices	165,795.70	
2. Supported by Invoices with TIN only	1,781.82	
3. Supported by photocopied VAT invoices	3,153.62	
III. Input Taxes on Importation of Goods:		
1. Supported by photocopied documents [IEDs and/or Bureau of Customs (BOC) Ors]	716,250.00	
2. Supported by broker's computations	91,601.00	990,090.69
b.) Input taxes without supporting documents as summarized in Annex A of SGV & Co.'s supplementary report (CTA records, page 134)		252,447.45

c.) Claimed input taxes on purchases of services from Mitsubishi Corp. for being substantiated by dubious OR	135,996,570.00[8]
Refundable Input	₱ 10,766,939.48

SO ORDERED.[9]

Explaining the disallowance of over PhP137 million claimed input VAT, the CTA stated that most of MPC's purchases upon which it anchored its claims for refund or tax credit have not been amply substantiated by pertinent documents, such as but not limited to VAT ORs, invoices, and other supporting documents. Wrote the CTA:

> We agree with the above SGV findings that out of the remaining taxes of ₱136,246,017.45, the amount of ₱252,477.45 was not supported by any document and should therefore be outrightly disallowed.
>
> As to the claimed input tax of ₱135,993,570.00 (₱136,246,017.45 less ₱252,477.45) on purchases of services from Mitsubishi Corporation, Japan, the same is found to be of doubtful veracity. While it is true that said amount is substantiated by a VAT official receipt with **Serial No. 0189** dated April 14, 1998 x x x, it must be observed, however, that said VAT allegedly paid pertains to the services which were rendered for the period 1993 to 1996. x x x

The Ruling of the CA

Aggrieved, MPC appealed the CTA's Decision to the CA via a petition for review under Rule 43, docketed as CA-G.R. SP No. 78280. On December 22, 2005, the CA rendered its assailed decision modifying that of the CTA decision by granting most of MPC's claims for tax refund or credit. And in a Resolution of March 31, 2006, the CA denied the BIR Commissioner's motion for reconsideration. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision of the Court of Tax Appeals dated

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[8] Should be 135,993,570.00 as per this petition and CA decision.

[9] *Supra* note 2, at 62.

March 18, 2003 is hereby MODIFIED. Accordingly, respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner Mirant Pagbilao Corporation its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the total amount of ₱146,760,509.48.

SO ORDERED.[10]

The CA agreed with the CTA on MPC's entitlement to (1) a zero-rating for VAT purposes for its sales and services to tax-exempt NPC; and (2) a refund or tax credit for its unutilized input VAT for the second quarter of 1998. Their disagreement, however, centered on the issue of proper documentation, particularly the evidentiary value of OR No. 0189.

The CA upheld the disallowance of PhP1,242,538.14 representing zero-rated input VAT claims supported only by photocopies of VAT OR/Invoice, documents other than VAT Invoice/OR, and mere broker's computations. But the CA allowed MPC's refund claim of PhP135,993,570 representing input VAT payments for purchases of goods and/or services from Mitsubishi supported by OR No. 0189. The appellate court ratiocinated that the CTA erred in disallowing said claim since the OR from Mitsubishi was the best evidence for the payment of input VAT by MPC to Mitsubishi as required under Sec. 110(A)(1)(b) of the NIRC. The CA ruled that the legal requirement of a VAT Invoice/OR to substantiate creditable input VAT was complied with through OR No. 0189 which must be viewed as conclusive proof of the payment of input VAT. To the CA, OR No. 0189 represented an undisputable acknowledgment and receipt by Mitsubishi of the input VAT payment of MPC.

The CA brushed aside the CTA's ruling and disquisition casting doubt on the veracity and genuineness of the Mitsubishi-issued OR No. 0189. It reasoned that the issuance date of the said receipt, April 14, 1998, must be taken conclusively to represent the input VAT payments made by MPC to Mitsubishi as MPC had no real control on the issuance of the OR. The CA held

[10] *Supra* note 1, at 43.

that the use of a different exchange rate reflected in the OR is of no consequence as what the OR undeniably attests and acknowledges was Mitsubishi's receipt of MPC's input VAT payment.

The Issue

Hence, the instant petition on the sole issue of "whether or not respondent [MPC] is entitled to the refund of its input VAT payments made from 1993 to 1996 amounting to [PhP] 146,760,509.48."[11]

The Court's Ruling

As a preliminary matter, it should be stressed that the BIR Commissioner, while making reference to the figure PhP 146,760,509.48, joins the CA and the CTA on their disposition on the propriety of the refund of or the issuance of a TCC for the amount of PhP 10,766,939.48. In fine, the BIR Commissioner trains his sight and focuses his arguments on the core issue of whether or not MPC is entitled to a refund for PhP135,993,570 (PhP146,760,509.48 - PhP10,766,939.48 = PhP135,993,570) it allegedly paid as creditable input VAT for services and goods purchased from Mitsubishi during the 1993 to 1996 stretch.

The divergent factual findings and rulings of the CTA and CA impel us to evaluate the evidence adduced below, particularly the April 14, 1998 OR 0189 in the amount of PhP 135,996,570 [for US$ 5,190,000 at US$1: PhP 26.203 rate of exchange]. Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[12] would have it, the result of legislative grace. In such case, the claim is to be construed *strictissimi juris* against the taxpayer,[13] meaning that the claim

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[11] *Rollo*, p. 15.

[12] G.R. Nos. 167274-75, July 21, 2008.

[13] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, citing *Commissioner of Internal Revenue v. Solidbank Corp.*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. The return of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government.[14] And as decisional law teaches, a claim for tax refund proper, as here, necessitates only the preponderance-of-evidence threshold like in any ordinary civil case.[15]

We apply the foregoing elementary principles in our evaluation on whether OR 0189, in the backdrop of the factual antecedents surrounding its issuance, sufficiently proves the alleged unutilized input VAT claimed by MPC.

The Court can review issues of fact where there are divergent findings by the trial and appellate courts

As a matter of sound practice, the Court refrains from reviewing the factual determinations of the CA or reevaluate the evidence upon which its decision is founded. One exception to this rule is when the CA and the trial court diametrically differ in their findings,[16] as here. In such a case, it is incumbent upon the Court to review and determine if the CA might have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would justify a different conclusion.[17] In the instant case, the CTA, unlike the CA, doubted

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[14] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co.*, No. L-30644, March 9, 1987, 148 SCRA 315, cited in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation, supra.*

[15] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation, ibid.*

[16] *Uy v. Villanueva,* G.R. No. 157851, June 29, 2007, 526 SCRA 73, 84.

[17] *Samala v. Court of Appeals*, G.R. No. 130826, February 17, 2004, 423 SCRA 142, 146.

the veracity of OR No. 0189 and did not appreciate the same to support MPC's claim for tax refund or credit.

Petitioner BIR Commissioner, echoing the CTA's stand, argues against the sufficiency of OR No. 0189 to prove unutilized input VAT payment by MPC. He states in this regard that the BIR can require additional evidence to prove and ascertain payment of creditable input VAT, or that the claim for refund or tax credit was filed within the prescriptive period, or had not previously been refunded to the taxpayer.

To bolster his position on the dubious character of OR No. 0189, or its insufficiency to prove input VAT payment by MPC, petitioner proffers the following arguments:

(1) The input tax covered by OR No. 0189 pertains to purchases by MPC from Mitsubishi covering the period from 1993 to 1996; however, MPC's claim for tax refund or credit was filed on December 20, 1999, clearly way beyond the two-year prescriptive period set in Sec. 112 of the NIRC;

(2) MPC failed to explain why OR No. 0189 was issued by Mitsubishi (Manila) when the invoices which the VAT were originally billed came from the Mitsubishi's head office in Japan;

(3) The exchange rate used in OR No. 0189 was pegged at PhP 26.203: USD 1 or the exchange rate prevailing in 1993 to 1996, when, on April 14, 1998, the date OR No. 0189 was issued, the exchange rate was already PhP 38.01 to a US dollar;

(4) OR No. 0189 does not show or include payment of accrued interest which Mitsubishi was charging and demanded from MPC for having advanced a considerable amount of VAT. The demand, per records, is embodied in the May 12, 1995 letter of Mitsubishi to MPC;

(5) MPC failed to present to the CTA its VAT returns for the second and third quarters of 1995, when the bulk of the VAT payment covered by OR No. 0189—specifically PhP 109,329,135.17 of the total amount of PhP 135,993,570—was billed by Mitsubishi, when such return is necessary to ascertain

that the total amount covered by the receipt or a large portion thereof was not previously refunded or credited; and

(6) No other documents proving said input VAT payment were presented except OR No. 0189 which, considering the fact that OR No. 0188 was likewise issued by Mitsubishi and presented before the CTA but admittedly for payments made by MPC on progress billings covering service purchases from 1993 to 1996, does not clearly show if such input VAT payment was also paid for the period 1993 to 1996 and would be beyond the two-year prescriptive period.

The petition is partly meritorious.

Belated payment by MPC of its obligation for creditable input VAT

As no less found by the CTA, citing the SGV's report, the payments covered by OR No. 0189 were for goods and service purchases made by MPC through the progress billings from Mitsubishi for the period covering April 1993 to September 1996—for the E & M Equipment Erection Portion of MPC's contract with Mitsubishi.[18] It is likewise undisputed that said payments did not include payments for the creditable input VAT of MPC. This fact is shown by the May 12, 1995 letter[19] from Mitsubishi where, as earlier indicated, it apprised MPC of the advances Mitsubishi made for the VAT payments, *i.e.*, MPC's creditable input VAT, and for which it was holding MPC accountable for interest therefor.

In net effect, MPC did not, for the VATable MPC-Mitsubishi 1993 to 1996 transactions adverted to, immediately pay the corresponding input VAT. OR No. 0189 issued on April 14, 1998 clearly reflects the belated payment of input VAT corresponding to the payment of the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. SGV found that OR No. 0189 in the amount of PhP 135,993,570 (USD 5,190,000) was duly

[18] *Rollo*, p. 57.

[19] *Id.* at 60.

supported by bank statement evidencing payment to Mitsubishi (Japan).[20] Undoubtedly, OR No. 0189 proves payment by MPC of its creditable input VAT relative to its purchases from Mitsubishi.

OR No. 0189 by itself sufficiently proves payment of VAT

The CA, citing Sec. 110(A)(1)(B) of the NIRC, held that OR No. 0189 constituted sufficient proof of payment of creditable input VAT for the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. Sec. 110(A)(1)(B) of the NIRC pertinently provides:

Section 110. *Tax Credits.* –

A. *Creditable Input Tax.* –

(1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

x x x x x x x x x

(b) **Purchase of services on which a value-added tax has been actually paid**. (Emphasis ours.)

Without necessarily saying that the BIR is precluded from requiring additional evidence to prove that input tax had indeed paid or, in fine, that the taxpayer is indeed entitled to a tax refund or credit for input VAT, we agree with the CA's above disposition. As the Court distinctly notes, the law considers a duly-executed VAT invoice or OR referred to in the above provision as sufficient evidence to support a claim for input tax credit. And any doubt as to what OR No. 0189 was for or tended to prove should reasonably be put to rest by the SGV report on which the CTA notably placed much reliance. The SGV report stated that "[OR] No. 0189 dated April 14, 1998 is for the payment of the VAT on the progress billings" from Mitsubishi Japan "for the period April 7, 1993 to September 6,

[20] *Id.* at 57.

1996 for the E & M Equipment Erection Portion of the Company's contract with Mitsubishi Corporation (Japan)."[21]

VAT presumably paid on April 14, 1998

While available records do not clearly indicate when MPC actually paid the creditable input VAT amounting to PhP 135,993,570 (USD 5,190,000) for the aforesaid 1993 to 1996 service purchases, the presumption is that payment was made on the date appearing on OR No. 0189, *i.e.,* April 14, 1998. In fact, said creditable input VAT was reflected in MPC's VAT return for the second quarter of 1998.

The aforementioned May 12, 1995 letter from Mitsubishi to MPC provides collaborating proof of the belated payment of the creditable input VAT angle. To reiterate, Mitsubishi, via said letter, apprised MPC of the VAT component of the service purchases MPC made and reminded MPC that Mitsubishi had advanced VAT payments to which Mitsubishi was entitled and from which it was demanding interest payment. Given the scenario depicted in said letter, it is understandable why Mitsubishi, in its effort to recover the amount it advanced, used the PhP 26.203: USD 1 exchange formula in OR No. 0189 for USD 5,190,000.

No showing of interest payment not fatal to claim for refund

Contrary to petitioner's posture, the matter of nonpayment by MPC of the interests demanded by Mitsubishi is not an argument against the fact of payment by MPC of its creditable input VAT or of the authenticity or genuineness of OR No. 0189; for at the end of the day, the matter of interest payment was between Mitsubishi and MPC and may very well be covered by another receipt. But the more important consideration is the fact that MPC, as confirmed by the SGV, paid its obligation to Mitsubishi, and the latter issued to MPC OR No. 0189, for the VAT component of its 1993 to 1996 service purchases.

The next question is, whether or not MPC is entitled to a refund or a TCC for the alleged unutilized input VAT of

[21] *Id.*

PhP 135,993,570 covered by OR No. 0189 which sufficiently proves payment of the input VAT.

We answer the query in the negative.

Claim for refund or tax credit filed out of time

The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:

> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued."[22] Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input

[22] *Id.* at 37.

VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*— The Commissioner may –

x x x x x x x x x

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x x x x x x

Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.*— No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis ours.)

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, the Court explained the nature of the VAT and the entitlement to tax refund or credit of a zero-rated taxpayer:

Viewed broadly, the VAT is a uniform tax x x x levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business as they pass along the production and distribution chain, the tax being limited only to the value added to such goods, properties or services by the seller, transferor or lessor. It is an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. As such, it should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax

on consumption. In either case, though, the same conclusion is arrived at.

The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method*. Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe x x x. Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.

x x x x x x x x x

Zero-rated transactions generally refer to the export sale of goods and supply of services. The **tax rate is set at zero**. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. **The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.**[23] (Emphasis added.)

Considering the foregoing discussion, it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.

As a final consideration, the Court wishes to remind the BIR and other tax agencies of their duty to treat claims for refunds and tax credits with proper attention and urgency. Had RDO

[23] G.R. No. 153866, February 11, 2005, 451 SCRA 132, 141-143.

No. 60 and, later, the BIR proper acted, instead of sitting, on MPC's underlying application for effective zero rating, the matter of addressing MPC's right, or lack of it, to tax credit or refund could have plausibly been addressed at their level and perchance freed the taxpayer and the government from the rigors of a tedious litigation.

The all too familiar complaint is that the government acts with dispatch when it comes to tax collection, but pays little, if any, attention to tax claims for refund or exemption. It is high time our tax collectors prove the cynics wrong.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision dated December 22, 2005 and the Resolution dated March 31, 2006 of the CA in CA-G.R. SP No. 78280 are *AFFIRMED* with the *MODIFICATION* that the claim of respondent MPC for tax refund or credit to the extent of PhP 135,993,570, representing its input VAT payments for service purchases from Mitsubishi Corporation of Japan for the construction of a portion of its Pagbilao, Quezon power station, is *DENIED* on the ground that the claim had prescribed. Accordingly, petitioner Commissioner of Internal Revenue is ordered to refund or, in the alternative, issue a tax credit certificate in favor of MPC, its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter in the total amount of PhP10,766,939.48.

No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172677. September 12, 2008]

ISAGANI YAMBOT and LETTY JIMENEZ-MAGSANOC, *petitioners, vs.* **RAYMUNDO A. ARMOVIT and HON. FRANCISCO R. RANCHES, in his capacity as the Presiding Judge of Branch 21 of the Regional Trial Court of Vigan, Ilocos Sur,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REVIEW OF EVIDENCE ADDUCED BY THE PARTIES BEFORE THE PROSECUTOR, NOT PROPER; RATIONALE. — *Crespo v. Mogul* instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court. It may therefore grant or deny at its option a motion to dismiss or to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative, and not out of subservience to the prosecutor. While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. It is well to note at this point that the Court, in this petition for review on *certiorari,* cannot review the evidence adduced by the parties before the prosecutor on the issue of the absence or presence of probable cause. Respect must be accorded to the trial court's disposition of the motion to withdraw absent any showing of grave abuse of discretion. The other arguments adduced by the petitioners — that the news reports are not defamatory, privileged in character and constitutionally protected — are

all matters of defense which can be properly ventilated during the trial.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioners.

Law Firm of Raymundo A. Armovit for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the September 16, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 54397, and the May 8, 2006 Resolution[2] denying the motion for reconsideration thereof.

We begin by a brief statement of the relevant facts and proceedings.

On account of the publication in the May 2 and 3, 1996 issues of the *Philippine Daily Inquirer* of news reports which allegedly imputed to private respondent Armovit the harboring or concealment of a convicted murderer (his client, Rolito Go), Armovit filed on May 15, 1996 with the Office of the Provincial Prosecutor (OPP) of Ilocos Sur a complaint-affidavit for libel against petitioners Yambot, the publisher, and Jimenez-Magsanoc, the editor-in-chief, and two other correspondents, Teddy Molina and Juliet Pascual, of the said broadsheet. Assistant Provincial Prosecutor Nonatus Rojas then issued, on October 31, 1996, a Resolution finding probable cause to indict the petitioners and the reporters for libel. Two criminal informations for libel were consequently filed with the Regional Trial Court (RTC) of Ilocos Sur, Branch 21.[3]

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; *rollo*, pp. 39-46.

[2] *Id.* at 48-50.

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

In the meantime, petitioners sought the review of the OPP's resolution by the Regional State Prosecutor (RSP). Eventually, RSP Constante Caridad reversed the findings of the OPP, prompting the latter to file a motion for the withdrawal of the aforesaid informations on February 12, 1997.[4]

The trial court, however, on July 9, 1997 denied the said motion on the ground that it found probable cause for the filing of the charges. The trial court later denied petitioners' motion for reconsideration.[5]

Frustrated with the trial court's dispositions, petitioners sought the issuance of a *certiorari* writ by the appellate court in CA-G.R. SP No. 54397. But the CA, in the assailed decision and resolution, denied the reliefs prayed for.[6]

Thus, petitioners elevated the matter for review by this Court on the following grounds:

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT REFUSED TO RULE THAT RESPONDENT TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN DENYING THE PROVINCIAL PUBLIC PROSECUTOR'S MOTION TO WITHDRAW THE TWO (2) INFORMATIONS FOR LIBEL AGAINST PETITIONERS, THUS EFFECTIVELY DEPRIVING THE PETITIONERS OF THEIR RIGHT TO PRELIMINARY INVESTIGATION.

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT REFUSED TO RULE THAT THE RESPONDENT TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THERE WAS PROBABLE CAUSE TO CHARGE PETITIONERS WITH LIBEL.[7]

Considering that the determination of probable cause to indict an accused is a function of the prosecutor, not of the judge, the petitioners argue in the main that the trial court should have deferred to the RSP's finding that no *prima*

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[4] *Id.* at 19.

[5] *Id.* at 19-20.

[6] *Supra* notes 1 and 2.

[7] *Id.* at 21.

facie case for libel exists. They further aver that the questioned news reports are not defamatory for they do not impute to private respondent, directly or impliedly, the commission of a crime. Further, they claim that the reports are privileged in character and are constitutionally protected; hence, malice cannot be presumed.[8]

We find no merit in petitioners' contentions; thus, we deny the petition.

Crespo v. Mogul[9] instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court.[10] It may therefore grant or deny at its option a motion to dismiss or to withdraw the information[11] based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative, and not out of subservience to the prosecutor.[12] While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her,[13] he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision.[14]

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[8] *Id.* at 121-137.

[9] No. 53373, June 30, 1987, 151 SCRA 462, 471.

[10] *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 612.

[11] *Santos v. Orda, Jr.*, 481 Phil. 93, 105-106 (2004).

[12] *Fuentes v. Sandiganbayan*, G.R. No. 164664, July 20, 2006, 495 SCRA 784, 800-801; *Pilapil v. Hon. Garchitorena*, 359 Phil. 674, 687-688 (1998).

[13] *Gandarosa v. Flores*, G.R. No. 167910, July 17, 2007, 527 SCRA 776, 793.

[14] *First Women's Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 647.

Applying the foregoing doctrines to the case at bar, the Court finds no error on the part of the appellate court in sustaining the orders of the trial court. The RTC of Ilocos Sur indeed has the prerogative to grant or deny the motion to withdraw the informations. Further, as clearly shown by the July 9, 1997 Order —

> [t]hat these defamatory imputations are false is established by all the evidence in the record of preliminary investigation; the accused submitted no evidence to prove the truth of the imputations. x x x[15]

the trial court made its own assessment of the records submitted to it and complied with its bounden duty to determine by itself the merits of the motion. Therefore, its ruling cannot be stigmatized and tainted with grave abuse of discretion.

It is well to note at this point that the Court, in this petition for review on *certiorari*, cannot review the evidence adduced by the parties before the prosecutor on the issue of the absence or presence of probable cause. [16] Respect must be accorded to the trial court's disposition of the motion to withdraw absent any showing of grave abuse of discretion.

The other arguments adduced by the petitioners—that the news reports are not defamatory, privileged in character and constitutionally protected—are all matters of defense which can be properly ventilated during the trial.

WHEREFORE, premises considered, the petition for review on *certiorari* is *DENIED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

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[15] *Rollo*, p. 85.

[16] *Adasa v. Abalos*, G.R. No. 168617, February 19, 2007, 516 SCRA 261, 281.

SECOND DIVISION

[G.R. No. 174098. September 12, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO TECZON *y* PASCUAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; INFLICTION OF PHYSICAL INJURY IS NOT AN ESSENTIAL ELEMENT THEREOF; RATIONALE. — Infliction of physical injury is not an essential element of rape. Under Article 266-A of the Revised Penal Code, the gravamen of rape is carnal knowledge of a woman through force, threat, or intimidation against her will or without her consent. What is imperative is that the element of force or intimidation be proven; and force need not always produce physical injuries. Notably, force, violence, or intimidation in rape is a relative term, depending on the age, size, strength, and relationship of the parties.

2. ID.; ID.; SUFFICIENTLY ESTABLISHED BY THE TESTIMONY OF THE RAPE VICTIM. — In this case, the prosecution was able to establish that accused-appellant employed sufficient intimidation in order to satisfy his lust against complainant. In her testimony, complainant stated that accused-appellant dragged her into a forested area with a knife pointed on her neck. As correctly observed by the trial court, complainant submitted to the will of accused-appellant because of fear for her life. Moreover, complainant could not be faulted for initially concealing the truth from her schoolmates and teacher as she was, at that time, still overcome by shock and fear. It must be emphasized that there is no standard form of reaction for a woman, much more a minor, when confronted with a horrifying experience such as a sexual assault. The actions of children who have undergone traumatic experience should not be judged by the norms of behavior expected from adults when placed under similar circumstances. The trial and appellate courts correctly assessed that complainant's testimony is credible; and accused-appellant has not shown any ground to make us rule otherwise. Unless it is shown that certain facts of substance

and value have been plainly overlooked, misunderstood, or misapplied, the trial court's finding of credibility shall prevail.

3. ID.; ID.; ACCUSED-APPELLANT'S BARE DENIAL AND ALIBI CANNOT PREVAIL OVER POSITIVE AND UNEQUIVOCAL STATEMENTS OF COMPLAINANTS. — The fact that accused-appellant remained in the area where the crime took place and reported an alleged misconduct committed by complainant does not indicate his innocence. As the appellate court observed, this does not establish the impossibility of accused-appellant's presence in the crime scene, much more of having committed the crime. Moreover, militating against his alleged inability to have sexual intercourse is the testimony of his own physician-witness who categorically stated that sexual intercourse was possible despite the presence of boils near the groin. Thus, weighed against the positive and unequivocal statements of complainant, accused-appellant's bare denial and alibi cannot stand. To stress, when the offended party is a young and immature girl between the ages of 12 to 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by a court trial if her accusation were untrue.

4. ID.; ID.; CIVIL LIABILITY; MORAL AND EXEMPLARY DAMAGES; WHEN AWARD THEREOF PROPER. — The award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling the victim to such award. However, the trial court failed to award civil indemnity and exemplary damages. The award of civil indemnity of PhP50,000, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape. Exemplary damages, on the other hand, is awarded when the crime is attended by an aggravating circumstance; or as in this case, as a public example, in order to protect young children from molestation by perverse elders. The award of PhP25,000 as exemplary damages in the case at bar is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Aquino Law Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated March 31, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01951 entitled *People of the Philippines v. Reynaldo Teczon* which affirmed the Judgment[2] dated June 22, 2001 of the Regional Trial Court (RTC), Branch 30 in San Pablo City in Criminal Case No. 12619-SP. The RTC found accused-appellant Reynaldo Teczon guilty of rape and imposed upon him the penalty of *reclusion perpetua*.

The Facts

On October 10, 2000, complainant AAA,[3] then 14 years old, accompanied her aunt to school for the latter to attend the Parents and Teachers' Association meeting. While the aunt was in the meeting, complainant left to get some refreshments outside the school.

On her way back, complainant chanced upon accused-appellant who, upon seeing her, invited her to eat in his house. She declined the invitation despite accused-appellant's persistence. Failing to convince complainant, accused-appellant pulled out a fan knife and pointed it on the left side of complainant's neck and warned her not to shout for help.[4]

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[1] *Rollo*, pp. 3-26. Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. De Leon.

[2] CA *rollo*, pp. 22-37. Penned by Judge Marivic Balisi Umali.

[3] In accordance with Republic Act No. 9262, otherwise known as the *Anti-Violence Against Women and Their Children Act of 2004* and its implementing rules, the real name of the victim is withheld; instead, a fictitious initial is used to represent her to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] *Rollo*, p. 5.

Accused-appellant then dragged complainant to a forested area. Still pointing the knife at complainant, accused-appellant removed his clothes. Thereafter, he undressed complainant, laid her on the ground, and kissed her lips, neck, and breasts. He then went on top of her and inserted his penis into her vagina. He pumped continuously and the assault lasted for about 20 minutes. Thereafter, accused-appellant allowed complainant to put her clothes back on. Accused-appellant threatened to kill AAA if she revealed the incident to anybody.[5]

While accused-appellant was buttoning his pants, complainant ran away and went back to her school. There she met some of her schoolmates who inquired why she looked disheveled. She dismissed them by saying that she had a fight with a girl who made fun of her. One student, however, reported the matter to their class adviser, who also asked her what happened. She continued to conceal the truth and again explained that she merely had a quarrel with a girl outside the school. The class adviser asked complainant to bring her mother to school the next day.[6]

Complainant slept at her schoolmate's house that night. The next day, she revealed to her mother what had happened. Her mother shared the information with complainant's class adviser. Complainant readily confirmed the report and pointed to accused-appellant as the assailant.[7]

Complainant, accompanied by her mother, then went to the San Pablo District Hospital for examination. Dr. Arlene Bicomong, the examining physician, found that complainant's hymen was no longer intact and that she had a vaginal laceration at the 6 o'clock position.[8]

Consequently, an Information for rape was filed against accused-appellant.[9] It reads:

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

[6] *Id.* at 6.

[7] *Id.* at 7.

[8] CA *rollo,* p. 26.

[9] *Id.* at 8.

That on or about October 10, 2000, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one [AAA], 14 years old, against her will and consent.

That the commission of the offense is aggravated by the use of deadly weapon with which the accused was then conveniently provided and that the crime committed is qualified by the fact that the victim is below eighteen (18) years old.

During trial, accused-appellant interposed the defense of denial. He claimed that AAA charged him with rape because he witnessed her committing an indecent act on the same day that the alleged rape occurred. He said that on October 10, 2000 at about 2 o'clock in the afternoon, he left home to see an *albularyo* (quack doctor) and have his boils treated. On his way, he accidentally saw a young man on top of a girl behind some tall plants about 10 to 15 meters away from the road. Upon noticing that the two were having sex, he shouted at them, and they suddenly scampered in different directions. He did not know the youngsters but he knew that they are students of the nearby school because of the girl's uniform. He disclosed the incident with the *albularyo* and with the school's canteen operator. He came to know the name of the girl only after the accusation against him was made.[10]

On June 22, 2001, the RTC rendered a Judgment, the dispositive portion of which reads:

WHEREFORE, his guilt having been established and proved beyond reasonable doubt for the crime of rape under RA 8353, the Court hereby sentences the accused Reynaldo Tec[z]on *y* Pascual to suffer the penalty of *reclusion perpetua* to indemnify [AAA], the amount of [PhP]50,000.00 for moral damages and to pay costs.

SO ORDERED.[11]

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[10] *Id.* at 29.

[11] *Id.* at 37.

Accused-appellant filed a Notice of Appeal and the records of the case were forwarded to this Court for review. The case was originally docketed as G.R. No. 151201. In accordance with *People v. Mateo*,[12] however, this Court, in its February 7, 2005 Resolution, transferred the case to the CA for intermediate review.

The Ruling of the CA

On March 31, 2006, the CA affirmed the June 22, 2001 Judgment of the RTC. Convinced of the credibility of the complainant, the CA dismissed the alleged inconsistencies in complainant's testimony. Further, it observed that there was nothing in the records that would show that complainant harbored any ill motive to charge accused-appellant as the sole perpetrator of the crime.

Moreover, the CA dismissed accused-appellant's alibi that the boils near his groin made it impossible for him to have sex. The CA noted that accused-appellant's claim was negated by the testimony of his own witness and examining physician when the latter testified that sexual intercourse was possible despite the boils.

Hence, we have this appeal.

The Issues

In a Resolution dated December 4, 2006, this Court required the parties to submit supplemental briefs if they so desired. On August 29, 2007, accused-appellant, through counsel, signified that he was no longer filing a supplemental brief. Thus, the issues raised in accused-appellant's Brief dated February 3, 2003 are now deemed adopted in this present appeal:

I

That the lower court gravely erred in not giving weight and credit [to] the immediate report by the accused-appellant of having seen the rape-victim engaging in sexual congress with a young man on the date and time in question.

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

II

That the lower court committed reversible error by relying totally on the testimony of the complainant [despite] attendant facts and circumstances rendering her as an incredible witness-victim.

III

That the lower court erred in faulting the accused for not presenting during the trial Jeffrey Manalo, the sexual partner of the rape-victim seen by the accused in their consensual sexual affair.

IV

That the lower court gravely erred in adjudging the appellant guilty beyond reasonable doubt [despite] the foregoing assigned errors *vis-à-vis* the credible evidence of the defense negating moral certainty of his conviction.[13]

In essence, the issues involve the credibility of the complaining witness and the veracity of accused-appellant's defense.

This Court's Ruling

The appeal has no merit.

In an attempt to discredit complainant's testimony, accused-appellant alleges that complainant's narration of the crime is full of improbabilities. He faults complainant for not having scratches or physical evidence of resistance that would support her claim that she was sexually attacked. He further questions complainant for not exhibiting emotional trauma consistent with being raped. He thus maintains that he was merely implicated by complainant because he alerted the school personnel about her indecent act with her schoolmate.

Accused-appellant's arguments deserve scant consideration. Infliction of physical injury is not an essential element of rape.[14]

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[13] CA *rollo*, p. 74. Original in capital letters.

[14] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 429; *People v. Sonido*, G.R. No. 148815, July 7, 2004, 433 SCRA 689, 714; *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 546.

Under Article 266-A of the Revised Penal Code, the gravamen of rape is carnal knowledge of a woman through force, threat, or intimidation against her will or without her consent. What is imperative is that the element of force or intimidation be proven;[15] and force need not always produce physical injuries.[16] Notably, force, violence, or intimidation in rape is a relative term, depending on the age, size, strength, and relationship of the parties.[17]

In this case, the prosecution was able to establish that accused-appellant employed sufficient intimidation in order to satisfy his lust against complainant. In her testimony, complainant stated that accused-appellant dragged her into a forested area with a knife pointed on her neck. As correctly observed by the trial court, complainant submitted to the will of accused-appellant because of fear for her life, thus:

> [AAA] was helpless against him because he poked a knife at her and threatened to kill her. Fear so overcame her that she could only submit to his lust. The Court is not surprised that [AAA] did not put up a tenacious resistance for how could she fight off the accused who stands more than six feet tall and of heavy built, not to mention that he was armed with a knife. She saw in him a ferocious ogre ready to attack his prey. She found no chance of fighting him off. There was no one around to seek help from.[18]

Moreover, complainant could not be faulted for initially concealing the truth from her schoolmates and teacher as she was, at that time, still overcome by shock and fear. It must be emphasized that there is no standard form of reaction for a woman, much more a minor, when confronted with a horrifying

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[15] *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 403; *People v. De Guzman*, G.R. No. 132071, October 16, 2000, 343 SCRA 267, 275.

[16] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 335.

[17] *San Antonio, Jr., supra* at 428-429; *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 554; *People v. Antonio*, G.R. No. 157269, June 3, 2004, 430 SCRA 619, 625.

[18] CA *rollo*, p. 33.

experience such as a sexual assault.[19] The actions of children who have undergone traumatic experience should not be judged by the norms of behavior expected from adults when placed under similar circumstances.[20]

The trial and appellate courts correctly assessed that complainant's testimony is credible; and accused-appellant has not shown any ground to make us rule otherwise. Unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied, the trial court's finding of credibility shall prevail.[21]

We now rule on accused-appellant's defense. Accused-appellant maintains that the trial and appellate courts should have given credence to his report that he had caught complainant having sex with her schoolmate, and that the presence of his boils made it impossible for him to engage in sexual intercourse.

We are not persuaded. The fact that accused-appellant remained in the area where the crime took place and reported an alleged misconduct committed by complainant does not indicate his innocence. As the appellate court observed, this does not establish the impossibility of accused-appellant's presence in the crime scene, much more of having committed the crime. Moreover, militating against his alleged inability to have sexual intercourse is the testimony of his own physician-witness who categorically stated that sexual intercourse was possible despite the presence of boils near the groin.[22]

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[19] *San Antonio, Jr.*, *supra* at 428; *Antonio*, *supra* at 626.

[20] *People v. Tonyacao*, G.R. No. 134531-32, July 7, 2004, 433 SCRA 513, 529; *People v. Malones*, *supra* at 336-337; *People v. Montes*, G.R. Nos. 148743-45, November 18, 2003, 416 SCRA 103, 112; *People v. Montemayor*, G.R. No. 124474 & 139972-78, January 28, 2003, 896 SCRA 159, 173.

[21] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 445; *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658; *People v. Macapal, Jr.*, G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400.

[22] CA *rollo*, pp. 18-19.

Thus, weighed against the positive and unequivocal statements of complainant, accused-appellant's bare denial and alibi cannot stand. To stress, when the offended party is a young and immature girl between the ages of 12 to 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by a court trial if her accusation were untrue.[23]

As regards the award of damages, we note that the trial court correctly awarded PhP 50,000 as moral damages. The award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling the victim to such award.[24] However, the trial court failed to award civil indemnity and exemplary damages. The award of civil indemnity of PhP 50,000, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape.[25] Exemplary damages, on the other hand, is awarded when the crime is attended by an aggravating circumstance;[26] or as in this case, as a public example, in order to protect young children from molestation by perverse elders.[27] The award of PhP 25,000 as exemplary damages in the case at bar is proper.

WHEREFORE, the Court *AFFIRMS* the March 31, 2006 Decision of the CA in CA-G.R. CR-H.C. No. 01951 with *MODIFICATIONS* to read as follows:

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[23] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 343; citing *People v. Alberio*, G.R. No. 152584, July 6, 2004, 433 SCRA 469, 478; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174-175; *People v. Pascua*, G.R. Nos. 128159-62, July 14, 2003, 406 SCRA 103, 109.

[24] *People v. Cayabyab*, G.R. No. 167147, August 3, 2005, 465 SCRA 681, 693.

[25] *Dimaano*, *supra* at 669.

[26] CIVIL CODE, Art. 2230.

[27] *People v. Mantis*, G.R. Nos. 150613-14, June 29, 2004, 433 SCRA 236, 250.

WHEREFORE, his guilt having been established and proven beyond reasonable doubt for the crime of rape under Republic Act No. 8353, the Court hereby sentences the accused Reynaldo Teczon *y* Pascual to suffer the penalty of *reclusion perpetua*, and **to indemnify the complainant the amount of PhP 50,000 as moral damages, PhP50,000 as civil indemnity, PhP25,000 as exemplary damages, and to pay the costs**.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174346. September 12, 2008]

FERNANDA GEONZON *VDA. DE* BARRERA and JOHNNY OCO, JR., *petitioners, vs.* **HEIRS OF VICENTE LEGASPI, REPRESENTED BY PEDRO LEGASPI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT CASES; JURISDICTION. — Section 33 of Batas Pambansa Bilang 129, (the Judiciary Reorganization Act of 1980), as amended by Republic Act No. 7691 provides for the jurisdiction of metropolitan trial courts, municipal trial courts and municipal circuit trial courts, to wit: x x x (3) **Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00)** or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty

thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots. Before the amendments introduced by Republic Act No. 7691, the plenary action of *accion publiciana* was to be brought before the regional trial court. With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000, ₱50,000 where the action is filed in Metro Manila. The first level courts thus have exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria* where the *assessed* value of the real property does not exceed the aforestated amounts. Accordingly, the jurisdictional element is the assessed value of the property. Assessed value is understood to be "the worth or value of property established by taxing authorities on the basis of which the tax rate is applied. Commonly, however, it does not represent the true or market value of the property."

2. ID.; ID.; ID.; DISMISSAL OF ACTION; LACK OF JURISDICTION AS A GROUND; WHEN PROPER.— Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. That the issue of lack of jurisdiction was raised by petitioners only in their Memorandum filed before the trial court did not thus render them in estoppel. *En passant*, the Court notes that respondents' cause of action — *accion publiciana* is a wrong mode. The dispossession took place on October 1, 1996 and the complaint was filed four months thereafter or on February 7, 1997. Respondents' exclusion from the property had thus not lasted for more than one year to call for the remedy of *accion publiciana.* In fine, since the RTC has no jurisdiction over the complaint filed by respondents, all the proceedings therein as well as the Decision of November 27, 1998, are null and void. The complaint should perforce be dismissed. This leaves it unnecessary to still dwell on the first issue.

APPEARANCES OF COUNSEL

Alfredo Y. Galicinao & Andres T. Nacilla for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Under review before this Court is the July 31, 2006 Decision of the Court of Appeals,[1] which affirmed that of the Regional Trial Court, Branch 16, of Tangub City in Civil Case No. TC-97-001, ordering the defendants-petitioners herein, Fernanda Geonzon *vda. de* Barrera and Johnny Oco. Jr. to return possession of the subject property to the plaintiffs-herein respondents, Heirs of Vicente Legaspi.

On October 1, 1996, petitioner Johnny Oco Jr. (Oco), said to be a "peace officer connected with the PNP," accompanied by "unidentified CAFGU members," forced his way into respondents' 0.9504-hectare irrigated farmland located at Liloan, Bonifacio, Misamis Occidental. After dispossessing respondents of the property, Oco and company used a tractor to destroy the planted crops, took possession of the land, and had since tended it.[2]

Respondents thus filed on February 7, 1997 a complaint before the Regional Trial Court of Tangub City for *Reconveyance of Possession with Preliminary Mandatory Injunction and Damages*[3] against petitioners.

In their Answer, petitioners claimed that the subject land forms part of a three-hectare property described in OCT No. P-447 issued on February 10, 1956 in the name of Andrea Lacson who sold a 2-hectare portion thereof to Eleuterio Geonzon who,

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[1] Penned by Justice Ramon R. Garcia and concurred in by Justices Romulo V. Borja and Mario V. Lopez.

[2] TSN, March 16, 1998, pp. 22-25.

[3] Per Pre-Trial Order dated October 2, 1997; Records, pp. 24-25. The complaint was originally for "*Reconveyance, Possession with Preliminary Mandatory Injunction with Damages*."

in turn, sold 1.1148 thereof to his sister petitioner Fernanda Geonzon *vda. de* Barrera (Fernanda).[4]

Respondents, on the other hand, asserted that the land was occupied, possessed and cultivated by their predecessor-in-interest Vicente Legaspi and his wife Lorenza since 1935;[5] after a subdivision survey was conducted in November 30, 1976, it was found out that the land formed part of the titled property of Andrea Lacson;[6] and despite this discovery, they never filed any action to recover ownership thereof since they were left undisturbed in their possession,[7] until October 1, 1996 when petitioners forced their way into it.

Petitioners raised the issue of ownership as a special affirmative defense.[8] In their Memorandum, however, they questioned the jurisdiction of the RTC over the subject matter of the complaint, the assessed value of the land being only ₱11,160,[9] as reflected in Tax Declaration No. 7565.[10]

By Decision of November 27, 1998, the trial court found for respondents, disposing as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs [herein respondents] and against the defendants [-herein petitioners]:
>
> 1. Ordering the latter to return the possession of the land in question to the plaintiffs and
>
> 2. Ordering the latter to desist from further depriving and disturbing plaintiffs' peaceful possession thereof, unless there be another court judgment to the contrary.
>
> SO ORDERED.

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[4] Records, pp. 10-11.

[5] TSN, January 14, 1998, p. 7.

[6] Records, p. 63; Exhibit "E".

[7] TSN, February 3, 1998, p. 22.

[8] Records, pp. 10-14.

[9] *Id.* at p. 133.

[10] *Id*. at p. 45; Exhibit "C" for the plaintiffs, Exhibit "3" for the defendants.

On the issue of jurisdiction over the subject matter, the trial court, maintaining that it had, held:

> The Court is not persuaded by [the defendants'] arguments. What determines the nature of the action as well as the jurisdiction of the [c]ourt are the facts alleged in the complaint and not those alleged in the answer of the defendants.
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> In [p]ar. 2 of plaintiffs' complaint, the land in question was described as a riceland "situated at Liloan, Bonifacio, Misamis Occ. and declared under [T]ax [D]eclaration No. 7564 in the name of Vicente Legaspi and bounded on the north by a creek, on the east Sec. 12, on the south Lot No. 007 and on the west also by Lot No. 007 which tax declaration cancels former [T]ax [D]eclaration No. 12933 under the name of Lorenza Bacul Legaspi which likewise cancels [T]ax [D]eclaration No. 5454 covering the bigger portion of the land under which the land described under [T]ax [D]eclaration No. 7565 is part and parcel thereof [sic]; **the present estimated value being ₱50,000**."[11] Emphasis and underscoring supplied)

Petitioners thereupon appealed to the Court of Appeals which affirmed the trial court's disposition of the issue of jurisdiction over the subject matter.

On the merits, the appellate court affirmed too the trial court's decision, finding that "both testimonial and documentary evidence on record established that appellees, through their predecessors-in-interest, have been in peaceful, continuous, public and actual possession of the property in dispute even before the year 1930."[12]

The appellate court emphasized that in an *accion publiciana*, the only issue involved is the determination of possession *de jure*.[13]

Hence, the present petition for review which raises the following issues:

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[11] *Rollo*, p. 39.

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

[13] *Id.* at p. 25.

I. . . . WHETHER OWNERSHIP AND TITLE CANNOT BE AN ISSUE TO DETERMINE WHO HAS A BETTER RIGHT [TO] THE PORTION LITIGATED; AND

II. WHETHER . . . THE NATURE OF THE ACTION AS WELL AS THE JURISDICTION OF THE COURT DEPEND ON THE FACTS AS ALLEGED IN THE COMPLAINT.[14]

For obvious reasons, the issue of lack of jurisdiction over the subject matter shall be first considered.

Section 33 of Batas Pambansa Bilang 129, (the Judiciary Reorganization Act of 1980), as amended by Republic Act No. 7691 provides for the jurisdiction of metropolitan trial courts, municipal trial courts and municipal circuit trial courts, to wit:

x x x x x x x x x

(3) **Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the *assessed* value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00)** or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots. (Emphasis, italics and underscoring supplied)

Before the amendments introduced by Republic Act No. 7691, the plenary action of *accion publiciana* was to be brought before the regional trial court.[15] With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000, ₱50,000 where the action is filed in Metro Manila. The first level courts thus have exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria* where the *assessed* value of the real property does not exceed the aforestated

[14] *Id.* at p. 8.

[15] *Aguilon v. Bohol*, G.R. No. L-27169, October 20, 1977, 169 Phil. 473, 476, citing *Tenorio v. Gomba*, 81 Phil. 54.

amounts. Accordingly, the jurisdictional element is the assessed value of the property.

Assessed value is understood to be "the worth or value of property established by taxing authorities on the basis of which the tax rate is applied. Commonly, however, it does not represent the true or market value of the property."[16]

The subject land has an assessed value of ₱11,160 as reflected in Tax Declaration No. 7565, a common exhibit of the parties. The bare claim of respondents that it has a value of ₱50,000 thus fails. The case, therefore, falls within the exclusive original jurisdiction of the municipal trial court.

It was error then for the RTC to take cognizance of the complaint based on the allegation that "the present estimated value [of the land is] ₱50,000,"which allegation is, oddly, handwritten on the printed pleading. The estimated value, commonly referred to as fair market value,[17] is entirely different from the assessed value of the property.

Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[18] That the issue of lack of jurisdiction was raised by petitioners only in their Memorandum filed before the trial court did not thus render them in estoppel.

En passant, the Court notes that respondents' cause of action – *accion publiciana* is a wrong mode. The dispossession took place on October 1, 1996 and the complaint was filed four

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[16] *BLACK'S LAW DICTIONARY*, 5th Ed., p. 106.

[17] Fair market value is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy (Section 199, R.A. 7160 or the LOCAL GOVERNMENT CODE).

[18] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005, 469 SCRA 424, 432.

months thereafter or on February 7, 1997. Respondents' exclusion from the property had thus not lasted for more than one year to call for the remedy of *accion publiciana*.

In fine, since the RTC has no jurisdiction over the complaint filed by respondents, all the proceedings therein as well as the Decision of November 27, 1998, are null and void. The complaint should perforce be dismissed. This leaves it unnecessary to still dwell on the first issue.

WHEREFORE, the petition is hereby *GRANTED*. The challenged July 31, 2006 Decision of the Court of Appeals is SET ASIDE. The decision of Branch 16 of the Regional Trial Court of Tangub City in Civil Case No. TC-97-001 is declared NULL and VOID for lack of jurisdiction.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177297. September 12, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CLAUDIO ZULUETA, SR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY FAILURE TO IMMEDIATELY REPORT THE CRIME. — The Court has time and again held that the workings of the human mind are unpredictable; that people react differently and there is no standard pattern of behavior when one is confronted by a shocking incident. The failure of a rape

victim, such as AAA, to immediately report her ordeal or to flee from the clutches of a sex fiend does not, standing alone, affect the credibility of her testimony on the rape incident, nor is it indicative of false accusation. In the case at bench, the inaction of AAA is understandable and may even be expected, scared as she was of her father and that she had no place to go if she were to flee.

2. ID.; ID.; ID.; ASSESSMENT BY THE TRIAL COURT MUST BE RESPECTED ABSENCE ANY PROOF THAT IT PLAINLY OVERLOOKED CERTAIN FACTS OF SUBSTANCE OR THAT THE VICTIM IS ACTUATED BY IMPROPER MOTIVE.— The trial court's assessment of Erlinda's credibility must be respected, absent proof that it plainly overlooked certain facts of substance or that she was actuated by improper motive. The inconsistency pointed out by accused-appellant, referring to the fact that Erlinda testified hearing AAA crying on the night of June 1, 1995, when AAA stated that her cries at the time were not loud, is too trivial to affect Erlinda's credibility and does not detract from the ample evidence in support of the rape charges.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision dated October 27, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00079 entitled *People of the Philippines v. Claudio Zulueta, Sr.*, affirming with modification the December 28, 1998 Decision of the Regional Trial Court (RTC), Branch 25 in Koronadal, South Cotabato in Criminal Case Nos. 3647-25, 3648-25, and 3649-25 which found accused-appellant Claudio Zulueta, Sr. guilty of three (3) counts of rape.

The Facts

Except for the dates and time of commission of the offense, the three Informations filed against accused-appellant contained the same accusatory portion as the first Information in Criminal Case No. 3647-25:

> That on or about the 1st day of June, 1995 at about 12:00 o'clock in the evening at Sitio Miasong, Barangay Pulabato, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],[1] his own daughter, against her will and consent.
>
> Contrary to law with the aggravating circumstance that the crime was committed with abuse of confidence and evident premeditation.[2]

The second count of rape in Criminal Case No. 3648-25 was allegedly committed on June 2, 1995 at about 3:00 a.m., while the third count in Criminal Case No. 3649-25 was allegedly committed at about 9:00 p.m. on May 25, 1995.[3]

When arraigned, accused-appellant pleaded not guilty to all the charges against him.

The prosecution presented the following facts:

On May 25, 1995, accused-appellant, a resident of Pulabato, Tampakan, South Cotabato, asked his daughter, AAA, then 13 years old, to accompany him to clear their farm of weeds. The farm was situated in *Sitio* Miasong of the same town where they have another house. Arriving at the Miasong house after the day's work, AAA lied down on a mat to sleep. Shortly after, accused-appellant came near to touch her and told her

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[1] In accordance with Republic Act No. 9262, otherwise known as the *Anti-Violence Against Women and Their Children Act of 2004* and its implementing rules, the real name of the victim is withheld; instead, a fictitious initial is used to represent her to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] *Rollo*, p. 7.

[3] *Id.*

not to make any noise. When AAA tried to resist, accused-appellant tied her hands behind her back, then proceeded to undress himself and AAA. Accused-appellant then placed himself on top of her. Despite AAA's efforts to free herself, accused-appellant was able to insert his penis into her vagina. Following the sexual assault, accused-appellant untied AAA and left her to sleep.

AAA stayed at the Miasong house for another five days, unable to leave as her father was watching her. At around midnight of June 1, 1995, AAA was awakened by her father undressing her. When she started to cry, accused-appellant hit her thrice and threatened to hit her again if she did not stop crying. Despite the desperate pleas of a daughter to a father, accused-appellant persisted and succeeded in having sex with AAA. After he was through with his bestial act, accused-appellant again threatened AAA, this time with death should she report the incident to her mother.

The next morning, a neighbor, Erlinda Labastro, asked AAA about the cries she heard the night before. When told about the sexual abuse, Erlinda advised her to run away, but AAA replied that she was scared to leave the place and had nowhere to go besides.

On the evening of June 2, 1995, accused-appellant again forced himself on the struggling AAA.

Somehow, word got around of the sexual abuse to which AAA was being subjected. When told about what happened to AAA, her eldest brother lost no time in fetching AAA and accompanying her to see a *barangay* official to file a complaint.

On June 3, 1995, a medical examination conducted on AAA showed hymenal lacerations and the recent loss of virginity.

As summarized by the RTC, accused-appellant gave the following version of the events that transpired:

> x x x Corroborated by his brother Obrero x x x, accused Claudio Zulueta says that during the time complained of by his daughter [AAA], he was in their house at Pulabato proper, repairing their

kitchen. Helped by his brother Obrero x x x, accused started his repair work in April, 1995. It lasted up to June 6, 1995 when he was arrested upon the complaint of [AAA]. [AAA] was on May 25, June 1 and 2, 1995 in [S]itio Miasong, working at their farm together with her siblings [BBB], [CCC], and [DDD]. At nighttime, the children would sleep with their uncle Victorio (Vic-vic) Zulueta, a younger brother of the accused who also had a house near the house of the accused at [S]itio Miasong.

The house of the accused at [S]itio Miasong is some five (5) kilometers away from his house at Barangay Pulabato proper.[4]

After trial, the RTC found accused-appellant guilty as charged. The dispositive portion of its Decision reads:

ACCORDINGLY, we find accused CLAUDIO ZULUETA, SR. guilty beyond reasonable doubt of the felony of rape defined and penalized under Article 335 of the Revised Penal Code, as amended, in each of the three (3) cases, to wit: Criminal Case No. 3647-25, 3648-25, and 3649-25. Said accused is hereby sentenced to suffer the supreme penalty of death in each case, to be executed in the manner provided by law; to indemnify the victim [AAA] moral damages in the sum of ₱50,000.00 and exemplary damages in the sum of ₱20,000.00, likewise in each of the three cases, or in the total sum of TWO HUNDRED TEN THOUSAND (₱210,000.00) PESOS, and to pay the costs.

May the good LORD have mercy on his soul.

SO ORDERED.[5]

The CA affirmed the RTC decision with a modification on the penalty imposed and the damages awarded. The *fallo* of the CA's Decision reads:

FOR THE REASONS STATED, the assailed Joint Decision dated December 28, 1998 of the Regional Trial Court, Branch 25, Koronodal, South Cotabato so far as it held appellant guilty beyond reasonable doubt of three (3) counts of rape is AFFIRMED with the following MODIFICATIONS, namely: (1) The accused is sentenced to suffer the penalty of *reclusion perpetua* in each count; and (2) He shall pay the victim, [AAA], ₱50,000.00 as civil indemnity, ₱50,000.00 as

[4] CA *rollo*, p. 43.

[5] *Id.* at 61-62. Penned by Judge Francisco S. Ampig, Jr.

moral damages and ₱20,000.00 as exemplary damages, for each and every count of rape. *Costs against appellant.*

SO ORDERED.[6]

In its ruling, the CA, addressing the implication arising from AAA's failure to report the first incident of rape immediately after its occurrence, stated that AAA cannot be blamed if she failed to confide to anyone the first time her father raped her.[7] As reasoned out, such delay did not diminish AAA's credibility, having been earlier threatened with death should she reveal what happened between her and accused-appellant; and as a girl of tender age, AAA would naturally be easily intimidated into silence.

The CA also dismissed arguments tending to cast doubt on the credibility of Erlinda's testimony.

Vis-à-vis the penalty imposed, the CA held that the attendant circumstance of minority, in tandem with relationship, which would have otherwise qualified the offense, was not alleged in the informations and/or proven; hence, accused-appellant should only be convicted of simple rape and sentenced to *reclusion perpetua* for each count.

On November 29, 2006, accused-appellant filed his Notice of Appeal of the CA Decision.

On August 15, 2007, this Court required the parties to submit supplemental briefs if they so desired. They, however, manifested their willingness to submit the case on the basis of the records already submitted.

Accused-appellant seeks acquittal on the lone submission that:

THE LOWER COURT ERRED IN FINDING [HIM] GUILTY OF THE CRIME OF RAPE AS DEFINED IN REPUBLIC ACT 7659

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[6] *Rollo*, p. 12. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez.

[7] *Id.* at 9.

In fine, accused-appellant assails the credibility of AAA, wondering why she failed early on to ask help from Erlinda, a next door neighbor, and why she waited for another rape incident to occur before confiding in Erlinda. To accused-appellant, who denied threatening AAA with bodily harm, AAA's act of remaining with him for five days after she was supposedly ravished is not a normal reaction of a rape victim.

Accused-appellant also maintains that the trial court erred in giving much weight to Erlinda's rather incredible testimony. He suggests that what Erlinda had to say was carefully devised and offered to fit the scenario which AAA created against him.

Our Ruling

We sustain the appellate court's decision.

The Court has time and again held that the workings of the human mind are unpredictable; that people react differently and there is no standard pattern of behavior when one is confronted by a shocking incident.[8] The failure of a rape victim, such as AAA, to immediately report her ordeal or to flee from the clutches of a sex fiend does not, standing alone, affect the credibility of her testimony on the rape incident, nor is it indicative of false accusation. In the case at bench, the inaction of AAA is understandable and may even be expected, scared as she was of her father and that she had no place to go if she were to flee.

Likewise unavailing is the accused-appellant's gratuitous claim about Erlinda's testimony having been concocted to corroborate false charges against him. To be sure, the RTC, as seconded by the CA, found Erlinda's testimony to be worthy of full faith and credence. The trial court's assessment of Erlinda's credibility must be respected, absent proof that it plainly overlooked certain facts of substance or that she was actuated by improper motive.

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[8] *People v. Ubiña*, G.R. No. 176349, July 10, 2007, 527 SCRA 307, 319; citing *People v. Ocampo*, G.R. No. 171731, August 11, 2006, 498 SCRA 581, 588.

The inconsistency pointed out by accused-appellant, referring to the fact that Erlinda testified hearing AAA crying on the night of June 1, 1995, when AAA stated that her cries at the time were not loud, is too trivial to affect Erlinda's credibility and does not detract from the ample evidence in support of the rape charges.

Accused-appellant's lament that the RTC should not have sentenced him to death is a non-issue since the CA already reduced the penalty to *reclusion perpetua*. But even if the death penalty were imposed by the CA, the same would still have to be reduced to *reclusion perpetua* by virtue of the enactment of Republic Act No. 9346 or *An Act Prohibiting the Imposition of the Death Penalty*, which bars the imposition of the death penalty.

Anent the matter of damages, we sustain the propriety of the grant by the CA of exemplary damages in favor of AAA, but increase the award from PhP 20,000 to PhP 25,000, in line with current jurisprudence.[9]

WHEREFORE, the appeal of accused-appellant is *DISMISSED*. The CA's Decision dated October 27, 2006 in CA-G.R. CR-H.C. No. 00079, finding him guilty of three (3) counts of rape and sentencing him to *reclusion perpetua* for each count, is *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages is raised to PhP 25,000.

No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

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[9] See *People v. Codilan*, G.R. No. 177144, July 23, 2008; *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008.

SECOND DIVISION

[G.R. No. 181633. September 12, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER UGOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF CHILD WITNESS; THE COURT MAY ALLOW LEADING QUESTIONS IN ALL STAGES OF EXAMINATION; RATIONALE. — The line of leading questions objected to by accused-appellant was warranted given the circumstances. A child of tender years may be asked leading questions under Section 10(c), Rule 132 of the Rules of Court. Sec. 20 of the *2000 Rule on Examination of a Child Witness* also provides, "The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice." The afore-cited rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings, and facilitate the ascertainment of truth. We find that the alleged coaching used in the course of examining AAA merely aided her in testifying with more detail and did not suggest to her the answers integral to the actual commission of rape.

2. ID.; ID.; ID.; CORROBORATION OF A CHILD'S TESTIMONY IS NOT REQUIRED. — Accused-appellant's denial of the crime cannot prevail over the positive testimony of the victim. As held in *People v. Suarez*, a rape victim's straightforward and candid account, corroborated by the medical findings of the examining physician, is sufficient to convict the accused. This conclusion becomes all the more firm where, as in this case, the child-victim takes the witness stand. Previous decisions involving rape cases have shown us the high improbability that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true. Also, as correctly pointed out by the CA, corroboration of a child's testimony is not even required under Sec. 22 of the *Rule on Examination of a Child Witness*, thus: Corroboration shall not be required of a testimony of a child. [The child's] testimony, if credible by itself, shall

be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

3. ID.; ID.; ID.; CATEGORICAL AND POSITIVE IDENTIFICATION OF ACCUSED PREVAILS OVER DENIAL AND ALIBI. — A rape victim's testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused. Categorical and positive identification of an accused, without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over denial and alibi, which are negative and self-serving. We thus affirm the trial court's appreciation of the testimonial evidence adduced. It is basic that the trial court's evaluation of the testimonies of witnesses should be accorded the highest respect as it has the best opportunity to observe directly the demeanor of witnesses on the stand and to establish whether they are telling the truth.

4. CRIMINAL LAW; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY NEEDS NO PROOF OTHER THAN THE FACT OF THE COMMISSION OF THE OFFENSE. — As to the award of damages, the RTC was correct in awarding civil indemnity in the amount of PhP50,000. Civil indemnity needs no proof other than the fact of the commission of the offense. The award is proper even if the minority of AAA was alleged. There was no allegation in the Information that accused-appellant was the victim's stepfather, precluding a charge for qualified rape which would have increased the award to PhP75,000. The CA was also correct in additionally awarding moral damages of PhP50,000. This is separate and distinct from civil indemnity. It does not require proof of mental and physical suffering.

5. ID.; RAPE; CAN BE COMMITTED THROUGH SEXUAL ASSAULT BY INSERTING AN INSTRUMENT OR OBJECT INTO THE GENITAL OR ANAL ORIFICE OF ANOTHER PERSON. — As a final note, we reject accused-appellant's argument that had he been found to have merely fingered AAA's sexual organ, he would only be convicted of acts of lasciviousness. As held in *De Castro v. Fernandez, Jr.*, the new law on rape now includes sexual assault. Although the amendment to the law on rape was made after accused-appellant was charged, it is well to point out that with its expanded

definition, rape can now be committed through sexual assault by inserting "any instrument or object, into the genital or anal orifice of another person."

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

Before us is an appeal from the October 25, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00310-MIN entitled *People of the Philippines v. Roger Ugos y Lanzo alias "Dodong."* The CA affirmed the February 8, 2000 Decision of the Regional Trial Court (RTC), Branch 15 in Davao City in Criminal Case No. 39413-97, finding accused-appellant Roger Ugos guilty of raping his stepdaughter and sentencing him to *reclusion perpetua*.

The Facts

On August 11, 1997, accused-appellant was charged with rape under an Information which reads:

> That on or about August 7, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with x x x [AAA], who is only seven (7) years of age.[1]

On arraignment, accused-appellant entered a not guilty plea.

The prosecution presented the following facts:

On the evening of August 7, 1997, accused-appellant, while drunk and looking for a *bolo*,[2] asked his stepdaughter, AAA,

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[1] CA *rollo*, p. 6.

[2] TSN, July 14, 1998, p. 24.

then seven years old, to look for her mother at her grandmother's place. But as her mother was not at her grandmother's residence, AAA went to look for her at a neighbor's house accompanied by accused-appellant. Her mother was not there, either. Accused-appellant thereupon held AAA and brought her to a nearby creek. Once there, he undressed her and then proceeded to insert his finger into her vagina four times.[3] Thereafter, accused-appellant bit AAA's face and inserted his penis into her vagina. Not content, he held her by the neck and boxed her in the face and stomach.[4] He then threatened to kill her if she told her mother about the incident.[5]

When asked upon reaching home about the lumps on her face, AAA told her mother that she fell at the waiting shed.[6] The next morning, however, AAA revealed the truth about her injuries, relating how accused-appellant, while holding her neck, bit and punched her on the cheek "causing a swelling and black right eye and bruises on the neck."[7] Mother and daughter then reported the incident to, only to be ignored by, the *barangay* captain. They then repaired to the police station in Toril to file a rape complaint before Police Station Child and Youth Officer Leonilo Jickain,[8] after which they proceeded to *Barrio* Catigan, the scene of the crime. Mother and daughter pointed to accused-appellant as the rapist.[9] After a short chase, he was apprehended and charged.[10]

Dr. Danilo Ledesma testified having examined AAA on August 11, 1997.[11] His findings: AAA had sustained contusions

[3] *Id.*

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

[5] *Id.* at 27.

[6] TSN, May 4, 1998, p. 15.

[7] *Id.* at 17.

[8] TSN, March 5, 1998, pp. 9-10.

[9] *Id.* at 10.

[10] *Id.* at 11.

[11] TSN, November 17, 1997, p. 2.

on her left eye and on her cheek. She also had a hemorrhage on both eyeballs. He also found that there was a complete hymenal laceration at the 5 and 9 o'clock positions, showing recent genital trauma.[12]

Accused-appellant, the lone witness for the defense, on the other hand, presented the following story, as summarized in the RTC decision:

> x x x [O]n August 7, 1997 from 7 A.M. to 7 P.M. he was in his employer's house because it was their barrio's fiesta, that on reaching home at about 7 P.M. only [his] step[children] AAA, 7 years old, Reggie 3 years old and [his] 10 year [old] niece were around. x x x his wife was not there so he went to their grandmother's house alone to get her, that his wife was not there, that he returned home at about 8 P.M. but she was not there in their house so he went to his ninang [godmother] and his neighbors looking for his wife, that he told the victim to go with him to the barrio which was about one kilometer from their house to look for his wife, that he told the victim to look for her mother while he waited in a shed, that the victim fell because the road was dark and slippery, that his wife was already home when they returned, that his wife smelled of liquor that night, that he and his wife quarreled and he hit his wife, that he did not rape and hit the victim, that he does not know why he is charged with rape.[13]

The RTC found accused-appellant guilty as charged. The dispositive portion of the RTC decision reads:

> WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, ROGER UGOS is hereby sentenced to *Reclusion perpetua* and to indemnify [AAA] the sum of Fifty Thousand Pesos (₱50,000.00).
>
> The preventive imprisonment shall be credited to the sentence of the accused if he voluntarily abides in writing to follow the rules under Article 29 of the Revised Penal Code.
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> SO ORDERED.[14]

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[12] *Id.*

[13] CA *rollo*, pp. 16-A-17.

[14] *Id.* at 22. Penned by Judge Jesus V. Quitain.

Accused-appellant thus appealed the RTC Decision with this Court.

On December 13, 2004, this Court, in accordance with *People v. Mateo*,[15] ordered the transfer of the case to the CA for intermediate review.

By a Decision dated October 25, 2007, the CA affirmed that of the RTC with a modification on the award of damages, disposing as follows:

> WHEREFORE, the lower court's Decision dated 8 February 2000 finding appellant guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED, WITH THE MODIFICATION that appellant is ordered to pay ₱50,000.00, representing moral damages, in addition to the civil indemnity of ₱50,000.00 he had been adjudged to pay by the trial court.
>
> SO ORDERED.[16]

On November 22, 2007, accused-appellant filed his Notice of Appeal of the CA Decision.

Accused-appellant presents a lone issue before the Court:

> WHETHER THE TRIAL COURT ERRED IN FINDING HIM GUILTY OF THE CRIME OF RAPE INSTEAD OF ACTS OF LASCIVIOUSNESS

Accused-appellant claims that the testimonies of AAA and her mother reveal only the commission of acts of lasciviousness. There was no sexual intercourse, according to him, as he only inserted his finger into her sex organ, adding that this was what AAA originally told her mother. He surmises that AAA, being underage, might have been confused with what the word "rape" meant. Accused-appellant further states that AAA only testified that he inserted his penis into her vagina when probed by the prosecutor through leading questions.

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

[16] *Rollo*, pp. 12-13. Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

Our Ruling

We affirm the appellate court's decision.

AAA, as found by both the trial and appellate courts, was unequivocal in her testimony that she was raped by accused-appellant. While her mother may have contradicted AAA's testimony by stating that AAA reportedly told her she was merely "fingered" by accused-appellant, it is AAA's clear and credible testimony that should determine accused-appellant's guilt. She detailed both in direct and cross-examinations how accused-appellant violated her; she minced no words about what accused-appellant did to her on August 7, 1997.

Accused-appellant does not dispute AAA's testimony, arguing that she might have been coached in her answers. He likewise states that what AAA and her mother reported to the police was an **attempt** to rape AAA. It was only when the prosecutor asked her leading questions that she testified that accused-appellant inserted his penis into her vagina.

The Court is not persuaded by his contentions for the following reasons: *First*, the testimony of Police Officer Jickain, who related that AAA's mother approached him on August 7, 1997 while he was on duty as Police Station Child and Youth Officer, has documentary support. He stated that AAA's mother reported that accused-appellant raped her daughter.[17] *Second*, accused-appellant's contention is at odds with what are contained in the records, which show that during cross-examination the trial court asked AAA what accused-appellant did to her, as follows:

COURT:

Q You said it is painful, is it because the finger was inserted or the penis?

A Because he inserted his finger into my vagina.

Q He did not insert his penis?

A He inserted.[18]

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[17] TSN, March 5, 1998, p. 10.

[18] TSN, July 14, 1998, p. 43.

The prosecutor, on the other hand, examined AAA in this wise:

Q Who mounted you?
A Ondongan.

Q This Ondongan is in court could you point him?
A (Witness pointing to a person seated on a chair with white t-shirt printed navy when asked he said he is Roger Ugos).

Q What did Ondongan or your stepfather do?
A He placed his hand on my vagina.

Q Were you still dressed?
A Yes, Sir.

Q What did he do to your dress?
A He inserted his finger [in] my vagina 4 times.

Q When he did that to you were you still dressed or were you already naked?[19]

x x x x x x x x x

Q What else?
A After that the accused stood up on a coco trunk [and] inserted his finger in my vagina four times.

Q What else did he do, did you see his penis?
A He inserted inside my vagina.

Q What did you feel when he inserted his penis in your vagina?
A I was angry, because he mounted me and it was very painful.[20]

The line of leading questions objected to by accused-appellant was warranted given the circumstances. A child of tender years may be asked leading questions under Section 10(c), Rule 132 of the Rules of Court. Sec. 20 of the *2000 Rule on Examination of a Child Witness* also provides, "The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice."

[19] *Id.* at 24-25.

[20] *Id.* at 27.

The afore-cited rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings, and facilitate the ascertainment of truth.[21]

We find that the alleged coaching used in the course of examining AAA merely aided her in testifying with more detail and did not suggest to her the answers integral to the actual commission of rape.

What is more, AAA's charge of rape finds support in the medical report on her physical injuries. The medico-legal witness, Dr. Ledesma, testified that he examined AAA four days after the rape incident and found fresh bruises on her face and lacerations in her vagina.[22]

Accused-appellant's denial of the crime cannot prevail over the positive testimony of the victim. As held in *People v. Suarez*, a rape victim's straightforward and candid account, corroborated by the medical findings of the examining physician, is sufficient to convict the accused.[23] This conclusion becomes all the more firm where, as in this case, the child-victim takes the witness stand. Previous decisions involving rape cases have shown us the high improbability that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true.[24] Also, as correctly pointed out by the CA, corroboration of a child's testimony is not even required under Sec. 22 of the *Rule on Examination of a Child Witness*, thus:

> Corroboration shall not be required of a testimony of a child. [The child's] testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

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[21] 2000 RULE ON EXAMINATION OF A CHILD WITNESS, Sec. 2.

[22] TSN, November 17, 1997, p. 2.

[23] G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 350.

[24] *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275, 287.

Accused-appellant's suggestion that the charge against him could have been fabricated, an offshoot of the argument he had with AAA's mother, has nothing to support itself. There is likewise nothing in the records indicating that the prosecution witnesses testified against accused-appellant out of malice.

A rape victim's testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.[25] Categorical and positive identification of an accused, without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over denial and alibi, which are negative and self-serving.[26] We thus affirm the trial court's appreciation of the testimonial evidence adduced. It is basic that the trial court's evaluation of the testimonies of witnesses should be accorded the highest respect as it has the best opportunity to observe directly the demeanor of witnesses on the stand and to establish whether they are telling the truth.[27]

As to the award of damages, the RTC was correct in awarding civil indemnity in the amount of PhP50,000. Civil indemnity needs no proof other than the fact of the commission of the offense.[28] The award is proper even if the minority of AAA was alleged. There was no allegation in the Information that accused-appellant was the victim's stepfather, precluding a charge for qualified rape which would have increased the award to PhP75,000.

The CA was also correct in additionally awarding moral damages of PhP 50,000. This is separate and distinct from

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[25] *People v. Dela Cruz*, G.R. No. 135022, July 11, 2002, 384 SCRA 375, 389.

[26] *Suarez*, *supra* at 349.

[27] *Dela Cruz*, *supra* at 390.

[28] *People v. Madia*, G.R. No. 130524, June 20, 2001, 359 SCRA 157, 165.

civil indemnity. It does not require proof of mental and physical suffering.[29]

As a final note, we reject accused-appellant's argument that had he been found to have merely fingered AAA's sexual organ, he would only be convicted of acts of lasciviousness. As held in *De Castro v. Fernandez, Jr.*, the new law on rape now includes sexual assault.[30] Although the amendment to the law on rape was made after accused-appellant was charged, it is well to point out that with its expanded definition, rape can now be committed through sexual assault by inserting "any instrument or object, into the genital or anal orifice of another person."[31]

WHEREFORE, the appeal of accused-appellant is *DISMISSED*. The Decision dated October 25, 2007 of the CA in CA-G.R. CR-H.C. No. 00310-MIN finding him guilty of the crime of rape is *AFFIRMED **IN TOTO***.

No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

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[29] *People v. Cultura*, G.R. No. 133831, February 14, 2003, 397 SCRA 368, 380.

[30] G.R. No. 155041, February 14, 2007, 515 SCRA 682, 689; citing *People v. Soriano*, 436 Phil. 719 (2002).

[31] Republic Act No. 8353 or *The Anti-Rape Law of 1997*, Sec. 2.

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