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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 25, 2008 TO OCTOBER 6, 2008

SUPREME COURT
MANILA
2013

Prepared
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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-07-2380. September 25, 2008]
(Formerly A.M. No. 06-10-613-RTC)

ABSENCE WITHOUT LEAVE (AWOL) OF MS. LYDIA A. RAMIL, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 14, DAVAO CITY.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; FAILURE TO REGULARLY PUNCH BUNDY CARD AND SUBMIT THE SAME AT THE END OF THE MONTH PURSUANT TO OCA CIRCULAR CONSTITUTES SIMPLE NEGLECT OF DUTY AND INSUBORDINATION. — Ramil failed to submit her bundy cards beginning November 2005 in clear contravention of OCA Circular No. 7-2003. And when she finally submitted her time cards, through a personal letter dated December 7, 2006 to the OCA Employees Leave Division, her bundy cards had incomplete or handwritten entries. In an attempt to compensate for the missing entries, she attached Certifications signed by her stating that she forgot to punch her bundy card on the dates stated therein. Such certifications cannot shield her from administrative liability. She is clearly guilty of simple neglect of duty for her failure to regularly and faithfully punch her bundy card and to submit the same at the end of each month as ordered by OCA Circular No. 7-2003. Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from

either carelessness or indifference. The OCA correctly observed that Ramil should be disciplined for insubordination for her failure to comply with OCA directives ordering her to submit her bundy cards. Despite the letters from the OCA Leave Division dated February 3 and April 6, 2006 asking her to submit her bundy cards, and a letter through CoC Atty. Velasco dated May 2, 2006 warning against her continued failure to submit the same, Ramil took no initiative to comply with the Court's directives. It had to take a Resolution dropping her from the rolls which the Court issued on November 13, 2006, for her to come to Court through a personal letter to the Employees Leave Division and a Motion for Reconsideration to signify that she was not on AWOL and was in fact serving her branch as stenographer. Even then, she did not provide any explanation for her failure to comply with the Employees Leave Division's directives.

2. ID.; ID.; ID.; ID.; PENALTY FOR SIMPLE NEGLECT OF DUTY AND INSUBORDINATION WHEN THERE ARE MITIGATING AND AGGRAVATING CIRCUMSTANCES. — Both simple neglect of duty and insubordination are less grave offenses under Section 52 B, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service; and they carry the penalty of suspension of one month and one day to six months for the first offense and dismissal for the second offense. Following Section 55 of the said Rules, since Ramil is guilty of two charges, the penalty to be imposed should be that corresponding to the more serious charge or count and the other shall be considered as an aggravating circumstance. Section 54 thereof also provides that where aggravating and mitigating circumstances are present, the *minimum* of the penalty shall be imposed where there are more mitigating circumstances present. In this case, Ramil's length of service, having begun on January 28, 1992, and the fact that this is her first offense should be considered as mitigating circumstances in her favor. Offsetting these two circumstances with one aggravating circumstance, the Court finds that Ramil should be suspended for one month and one day.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

The present administrative case stems from the failure of Lydia A. Ramil (Ramil), Court Stenographer III of the Regional Trial Court (RTC), Branch 14, Davao City, to comply with OCA Circular No. 7-2003 which requires the submission of duly accomplished Daily Time Records (DTR)/bundy cards at the end of each month.

Records show that Ramil did not submit her bundy cards starting from November 2005, nor did she file any application for leave. Ramil also did not comply with the directives of the Office of the Court Administrator (OCA) Leave Division, through its letters dated February 3 and April 6, 2006, directing her to submit the required bundy cards.[1] On May 2, 2006, the OCA requested Atty. Ray U. Velasco, Clerk of Court (CoC Velasco), to cause the service of a letter to Ramil requiring her to explain in writing her unauthorized absences, with warning that should she fail to do so, a recommendation to drop her from the rolls shall be submitted to the Court.[2] The OCA on May 16, 2006, recommended the withholding of salaries and benefits of Ramil for non-submission of her bundy cards.[3] Despite all these, Ramil still failed to abide by the OCA's orders. Thus, the Court issued a Resolution on November 13, 2006, dropping Ramil from the rolls effective November 2, 2005 for having been on absence without official leave (AWOL).[4]

On January 29, 2007, the Court received from Ramil a Motion for Reconsideration dated January 16, 2007 stating that she should not be considered on AWOL since she was not continuously

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[1] *Rollo*, pp. 117-118.

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

[3] See Administrative Matter for Agenda dated September 25, 2006, *id.* at 1, 6.

[4] *Id.* at 7.

absent from work for at least 30 days.[5] She attached: (1) the Calendar of Cases showing that she served as Stenographer on various dates from November 2005 to November 2006;[6] (2) a Travel Order noted by her Presiding Judge directing her to bring records of a case to the Supreme Court on December 7, 2005;[7] (3) her Performance Rating for January to June 2006; and (4) three letters of CoC Velasco to Caridad Pabello of the Office of Administrative Services (OAS) of the Supreme Court, dated July 14, November 20 and December 8, 2006, enclosing time cards and applications for leave of Ramil for the months of November 2005 to November 2006.[8] The OCA also reported that the Employees Leave Division of the OAS received a personal letter dated December 7, 2006 from Ramil attaching thereto all her lacking DTRs, Leave Applications and Certifications stating that she forgot to punch in her bundy card on the dates stated therein.[9]

The Court on February 21, 2007, referred Ramil's Motion for Reconsideration to the OCA for its evaluation, report and recommendation.[10]

In its Memorandum dated April 18, 2007, the OCA found: Ramil should not be considered on AWOL in view of the copies of DTRs and Calendar of Cases she submitted; however, her failure to comply with OCA Circular No. 7-2003 dated January 9, 2003 which required the submission of duly accomplished DTRs/bundy cards at the end of each month, together with her continuous failure to comply with the directives of the OCA, constituted violation of reasonable office rules and regulations of the Supreme Court.[11]

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

[6] November 3, 22, 29, December 1, 2005; January 12, 24, February 21, 23, March 28, 30, May 9, 11, June 13, August 1, 3, 8, September 28 and November 7, 2006, *id.* at 14-98.

[7] *Id.* at 99.

[8] *Id.* at 103-105.

[9] *Rollo*, pp. 110-114.

[10] *Id.* at 108.

[11] *Id.* at 114-115.

On June 25, 2007, the Court, adopting the recommendation of the OCA, resolved to: (1) set aside the November 13, 2006 Resolution of the Court; (2) direct the Financial Management Office to release the withheld salaries and other benefits of Ramil; and (3) refer the instant matter to the Legal Office of the OCA for appropriate disciplinary action on: (a) the incomplete/ conflicting entries in the DTRs submitted by Ramil and (b) her failure to comply with OCA Circular No. 7- 2003 and OCA directives.[12]

The OCA,[13] after the case had passed through its Legal Office, reported in its Memorandum dated September 4, 2007, that: Ramil should be penalized for violating OCA Circular No. 7-2003 dated January 9, 2003 for her failure to submit DTRs in due time despite the OCA's repeated demands and warnings; her disobedience of said rules is tantamount to insubordination; Ramil is likewise guilty of simple negligence for the incomplete/conflicting entries in the DTRs which she submitted; her bundy card for the months of November 2005 to September 2006 had incomplete entries; her time card for October 2006 was partly handwritten while that for November 2006 was handwritten in its entirety; Ramil also applied for sick leave on June 13, 2006 but the calendar of cases shows that she served as stenographer on said date; her excuse that she forgot to punch her bundy card on several occasions is unworthy of consideration; both simple neglect of duty and insubordination carry the penalty of suspension from one month and one day to six months under the Uniform Rules on Administrative Cases in the Civil Service; however, the fact that this is her first administrative case serves to mitigate her liability.[14]

The OCA then recommended that:

1. this case be RE-DOCKETED as a regular administrative matter;

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[12] *Id.* at 115-116, 162.

[13] Through Court Administrator Christopher O. Lock, Deputy Court Administrator Reuben P. dela Cruz, and OCA Chief of Legal Office Wilhelmina D. Geronga.

[14] *Rollo*, pp. 166-170.

2. Ms. LYDIA AUSTRIA-RAMIL, Court Stenographer III, Regional Trial Court, Branch 14, Davao City be found GUILTY, (a) for the incomplete/conflicting entries in her DTRs and (b) for failure to comply with OCA Circular No. 7-2003 and OCA directives; and

3. (a) For the incomplete/conflicting entries in her DTRs, she be meted with a penalty of One (1) month SUSPENSION without pay and other benefits which may accrue to her within the given period;

   (b) For Failure to comply with OCA Circular No. 7-2003 and OCA directives, she be meted with a penalty of ₱5,000.00 as FINE with Stern Warning that a repetition of similar infractions in the future shall be dealt with more severely.[15]

On September 24, 2007, the Court required Ramil to manifest within 10 days from notice whether she was willing to submit the case for decision based on the pleadings already filed.[16] She failed to submit any manifestation within the period given; thus, she is deemed to have the submitted case for resolution.

The Court agrees with the OCA except as to the penalty to be imposed.

The Court has consistently held that public service requires utmost integrity and discipline.[17] Judicial employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty; it is a mission.[18]

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[15] *Id.* at 170.

[16] *Id.* at 171.

[17] *Servino v. Adolfo,* A.M. No. P-06-2204, November 30, 2006, 509 SCRA 42; *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, All of the Municipal Trial Court-OCC, Guagua, Pampanga,* A.M. No. P-06-2243, September 26, 2006, 503 SCRA 52.

[18] *Re: Findings of Irregularity on the Bundy Cards of Personnel of the Regional Trial Court, Branch 26 and Municipal Trial Court, Medina, Misamis Oriental*, A.M. No. 04-11-671-RTC, October 14, 2005, 473 SCRA 1.

No less than the Constitution mandates that public office is a public trust and all public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.[19]

OCA Circular No. 7-2003 dated January 9, 2003 clearly states that:

> In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:
>
> 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office. x x x
>
> x x x x x x x x x
>
> 6. Failure to submit Certificates of Service and DTRs/Bundy Cards shall warrant the withholding of the salaries and benefits of the officers and employees concerned.

As provided by said circular, every official must truthfully and accurately enter his/her times of arrival in and departure from the office.[20] The entries therein must reflect the employee's true and actual times of arrival and departure.[21] Furthermore, failure of an employee reflect in the DTR/bundy card the actual times of arrival and departure not only reveals the employee's lack of candor; it also disturbingly shows his/her disregard of office rules.[22]

Ramil failed to submit her bundy cards beginning November 2005 in clear contravention of OCA Circular No. 7-2003. And

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[19] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, All of the Municipal Trial Court-OCC, Guagua, Pampanga, supra* note 17.

[20] *Garcia v. Bada*, A.M. No. P-07-2311, August 23, 2007, 530 SCRA 779.

[21] *Servino v. Adolfo, supra* note 17.

[22] *Servino v. Adolfo, id.*

when she finally submitted her time cards, through a personal letter dated December 7, 2006 to the OCA Employees Leave Division, her bundy cards had incomplete or handwritten entries.[23] In an attempt to compensate for the missing entries, she attached Certifications signed by her stating that she forgot to punch her bundy card on the dates stated therein.[24]

Such certifications cannot shield her from administrative liability. She is clearly guilty of simple neglect of duty for her failure to regularly and faithfully punch her bundy card and to submit the same at the end of each month as ordered by OCA Circular No. 7-2003. Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[25]

The OCA correctly observed that Ramil should be disciplined for insubordination for her failure to comply with OCA directives ordering her to submit her bundy cards. Despite the letters from the OCA Leave Division dated February 3 and April 6, 2006 asking her to submit her bundy cards, and a letter through CoC Atty. Velasco dated May 2, 2006 warning against her continued failure to submit the same, Ramil took no initiative to comply with the Court's directives. It had to take a Resolution dropping her from the rolls which the Court issued on November 13, 2006, for her to come to Court through a personal letter to the Employees Leave Division and a Motion for Reconsideration to signify that she was not on AWOL and was in fact serving her branch as stenographer. Even then, she did not provide any explanation for her failure to comply with the Employees Leave Division's directives.

Needless to say, every officer or employee in the judiciary is duty-bound to obey the orders and processes of the Supreme

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[23] OCA Memorandum dated April 18, 2007, *rollo*, pp. 110-114.

[24] *Id.* at 127, 132, 137, 139, 141b, 144, 147, 150b, 156, 159b.

[25] *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Casual Utility Worker II, Assigned at PHILJA Development Center, Tagaytay City*, A.M. No. 2004-35-SC, January 23, 2006, 479 SCRA 343.

Court without the least delay.[26] Refusal to comply with the orders of the Court constitutes insubordination which warrants disciplinary action.[27]

Both simple neglect of duty and insubordination are less grave offenses under Section 52 B, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service;[28] and they carry the penalty of suspension of one month and one day to six months for the first offense and dismissal for the second offense.[29] Following Section 55 of the said Rules, since Ramil is guilty of two charges, the penalty to be imposed should be that corresponding to the more serious charge or count and the other shall be considered as an aggravating circumstance.[30] Section 54 thereof also provides that where aggravating and mitigating circumstances are present, the *minimum* of the penalty shall be imposed where there are more mitigating circumstances present.[31]

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[26] *Flores v. Gatcheco*, A.M. No. P-06-2266, November 30, 2006, 509 SCRA 58.

[27] *Flores v. Gatcheco*, *id.*; *Marata v. Fernandez*, A.M. No. P-04-1871, August 9, 2005, 466 SCRA 45.

[28] Civil Service Commission, Memorandum Circular No. 19, s. 1999.

[29] Sec. 52 B (1) & (5).

[30] Section 55. *Penalty for the Most Serious Offense*. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

[31] Section 54. *Manner of Imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The *medium* of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The *maximum* of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each

In this case, Ramil's length of service, having begun on January 28, 1992, and the fact that this is her first offense should be considered as mitigating circumstances in her favor.[32] Offsetting these two circumstances with one aggravating circumstance, the Court finds that Ramil should be suspended for one month and one day.

The Court also finds it proper to direct CoC Atty. Ray U. Velasco to show cause why no disciplinary action should be taken against him for his failure to exercise due diligence in his administrative supervision of employees in their branch in the use of bundy clocks and the submission of the bundy cards in accordance with OCA Circular No. 7-2003.

WHEREFORE, the Court finds Lydia A. Ramil, Court Stenographer III of the Regional Trial Court, Branch 14, Davao City *GUILTY of SIMPLE NEGLECT OF DUTY and INSUBORDINATION* for which she is ordered *SUSPENDED* for one month and one day without pay and other benefits with a *WARNING* that a repetition of the same or similar offenses shall be dealt with more severely.

Clerk of Court Atty. Ray U. Velasco of the Regional Trial Court, Branch 14, Davao City is *ORDERED to SHOW CAUSE*, within ten (10) days from notice of herein Resolution, why no disciplinary action should be taken against him for his failure to duly supervise the employees in their branch particularly in their use of bundy clocks and the observance of OCA Circular No. 7-2003. Let this administrative matter be given a separate docket number and raffled for assignment to a Justice.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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other; and paragraph [c] shall be applied when there are more aggravating circumstances.

[32] See *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Casual Utility Worker II, Assigned at PHILJA Development Center, Tagaytay City, supra* note 25.

THIRD DIVISION

[A.M. No. RTJ-08-2127. September 25, 2008]
(Formerly OCA IPI No. 07-2697-RTJ)

CITA BORROMEO-GARCIA, *complainant, vs.* **JUDGE ERNESTO P. PAGAYATAN, Executive Judge, Regional Trial Court, Branch 46, San Jose, Occidental Mindoro,** *respondent.*

SYLLABUS

1. JUDICIAL EHTICS; JUDGES; POLICY ON ADMINISTRATIVE COMPLAINTS AGAINST JUDGES. — Administrative complaints leveled against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment. While the Court will not shirk from its responsibility of imposing discipline upon its magistrates, neither will it hesitate to shield them from unfounded suits that disrupt rather than promote the orderly administration of justice. When the complainant relies on mere conjectures and suppositions and fails to substantiate her claim, such as in the case at bar, the administrative complaint against the judge must be dismissed for lack of merit.

2. ID.; ID.; IN ADMINISTRATIVE PROCEEDING AGAINST A JUDGE, THE COMPLAINANT HAS THE BURDEN OF PROVING THE ALLEGATIONS IN HIS COMPLAINT; APPLICATION. — The Court cannot give credence to charges based on mere suspicion and speculation. It is settled that in administrative proceedings, the complainant has the burden of proving the allegations in her complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties. Indeed, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. As the charges herein being hurled by complainant against respondent are grave in nature, in order for him to be disciplined therefor, the evidence against him should be competent and derived from direct knowledge. With the failure of complainant to substantiate her

claims, the complaint against respondent should be dismissed for lack of merit.

3. ID.; ID.; A JUDGE MUST AT ALL TIMES NOT ONLY BE IMPARTIAL, BUT MAINTAIN THE APPEARANCE OF IMPARTIALITY; CASE AT BAR. — The dismissal of the charges of complainant against respondent, notwithstanding, respondent should still be disciplined for failure to avoid the appearance of partiality, which offense the Investigating Justice correctly appreciated. When asked during the investigation why Elsa, who is the ex-wife of the petitioner therein, Borromeo, Jr., was designated to receive evidence *ex-parte* in SP No. R-936, when she was not the acting Branch Clerk of Court, but the acting Clerk of Court of the Office of the Clerk of Court (OCC), respondent only answered that it had been their practice to refer *ex-parte* proceedings to the acting clerk of court of the OCC and not to the acting branch clerk of court, because such proceedings were simple; and the branch clerk of court had too much work, while those in the OCC had lesser load. Respondent also said that he didn't see any conflict with the fact that Elsa was the ex-wife of petitioner in S.P. No. R-936, Borromeo, Jr. The Court has held that a judge must at all times not only be impartial, but maintain the appearance of impartiality. x x x For indeed, the appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice. Lower court judges, such as respondent, play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.

APPEARANCES OF COUNSEL

Raymund P. Palad for complainant.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Cita Borromeo-Garcia (complainant) filed a Complaint before the Court dated June 14, 2007 charging Judge Ernesto P. Pagayatan (respondent), Executive Judge of the Regional Trial Court (RTC), Branch 46, San Jose, Occidental Mindoro with falsification, partiality, dishonesty, gross incompetence, evident bad faith, immorality and grave misconduct.

Complainant avers: Respondent committed falsification when, serving as Register of Deeds (RD) of San Jose, Occidental Mindoro, he cooperated with Soledad Ulayao (Ulayao) and Soledad Ortega Olano (Olano) in transferring 165 titles from the name of her father's mistress Blandina Garcia (Blandina) to her father Salvador S. Borromeo, Sr. (Borromeo, Sr.), even though respondent was fully aware that the signature appearing thereon was falsified. As payment for their services, Borromeo, Sr. gave Ulayao, Olano and respondent, 20 of the 165 titles which Ulayao kept until a judge from another branch, pursuant to another case, ordered to have said titles kept in *custodia legis*.[1]

Complainant further claims that: respondent was guilty of falsification and perjury when he granted the petition of her half-brother, Salvador G. Borromeo, Jr. (Borromeo, Jr.) for the issuance of owner's duplicate copies of 62 Transfer Certificate of Title (TCTs) knowing that Borromeo, Jr., illegitimate son of Borromeo, Sr. with Blandina, was not the owner of the same; respondent hastily ruled for a commissioner's hearing, decided for the issuance of new owner's certificates of titles, without requiring the production of certified true copies of all the titles being petitioned or requiring the Officer in Charge (OIC) Registrar to produce the book of titles; respondent also keeps a mistress, Elsa Aguirre (Elsa), Borromeo, Jr.'s former wife, which could explain the swift decision in favor of Borromeo, Jr.; Elsa wielded power in the RTC, as acting clerk of court and sheriff, even

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[1] *Rollo,* pp. 2-4.

though she is not a lawyer; Elsa together with Asst. Prosecutor Luduvico Salcedo, also acted as respondent's bagman.[2]

The Office of the Court Administrator (OCA) referred the Complaint to respondent for his Comment in a 1st Indorsement dated June 29, 2007.[3]

In his Comment[4] dated July 30, 2007, respondent denied the charges against him, claiming the same to be unfounded, hearsay and malicious. He avers that: he does not know complainant and that the latter is not a resident of San Jose, Occidental Mindoro; at the time the first falsification allegedly took place, respondent was an Asst. Provincial Prosecutor who acted as an *Ex-Officio* Registrar of Deeds, putting in extra hours to perform his added assignment; the documents allegedly falsified were "sales" leading to the registration and transfer of TCTs from Blandina to Borromeo, Sr.; he affixed his signatures to the TCTs after all pertinent documents were evaluated by Land Examiner Ulayao and were found to be complete and in order; if indeed signatures were falsified, respondent had nothing to do with the falsification or had any knowledge of the same; respondent never conspired with Olano and Ulayao and there was no agreement for them to split the 20 titles among themselves; as to the second charge of falsification, he rendered the decision on the petition of Borromeo, Jr. after due notice and hearing and all jurisdictional requirements were complied with; contrary to complainant's assertion, certified true copies of the 62 TCTs to be reconstituted were attached to the petition; Borromeo, Jr. also submitted a certification from the RD stating that the original copies of the TCTs were intact in said office; there was also no opposition during the hearing, hence, it was subject to an *ex-parte* hearing before the Clerk of Court as commissioner; he did not declare Borromeo, Jr. to be the owner of the properties but merely quoted Borromeo, Jr.'s testimony; moreover, the reconstituted titles are still in the name of Borromeo, Sr.; the

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[2] *Id.* at 2-12.

[3] *Id.* at 54.

[4] *Id.* at 57-70.

allegation that Elsa is his mistress is false; whatever dealings he has with Elsa, who is the Acting Clerk of Court of the RTC, is strictly related to their respective official duties; it is also not true that Elsa and Prosecutor Salcedo are respondent's bagmen; in all his years as prosecutor and later as judge, respondent never asked anyone to be his bagman and neither has he resolved or decided any case for any consideration; he has no unexplained or hidden wealth and is living a simple and modest life.[5]

Upon recommendation of the OCA, the Court in the Resolution dated January 23, 2008 referred the instant case to Associate Justice Jose C. Reyes, Jr. of the Court of Appeals (CA), Manila, for investigation, report and recommendation.[6]

Hearings were conducted and in his Report dated July 31, 2008, Investigating Justice Reyes found that complainant failed to substantiate her allegations. As stated in his Report:

> x x x [T]he investigating justice finds that aside from bare assertion complainant failed to present any evidence to substantiate her charges. She even admitted during her testimony that she had no direct knowledge of the facts constituting her allegations but that she derived her knowledge from other persons, that is, she had no direct knowledge of the facts constituting the alleged irregularities.
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> x x x x x x x x x
>
> As to the charges of immorality and grave misconduct which stemmed from the alleged illicit affair of respondent judge with Ms. Aguirre, the undersigned finds that complainant's own testimony showed that she based her allegation on what someone else had told her.
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> x x x x x x x x x
>
> The charges of partiality, dishonesty, and gross incompetence are all tied up to the petition for re-issuance of owner's duplicate certificate of titles filed by Salvador, Jr. From the same petition arose the allegation of falsification. Complainant claimed that respondent judge was partial, dishonest and had acted in bad faith

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[5] *Rollo*, pp. 57-70.

[6] *Id.* at 133.

because he granted Salvador, Jr.'s petition knowing that he was not the registered owner. She also claimed that this decision showed that respondent judge was grossly incompetent because the decision was not supported by facts and the law. By the same token she claimed that respondent judge was guilty of falsification.

x x x x x x x x x

[Based on Sec. 109 of Pres. Dec. No. 1529] it is clear that not only the registered owner but any person in interest may file a petition for re-issuance of the owner's duplicate title. In the present case, petitioner Salvador, Jr. is admittedly the illegitimate son of the deceased Salvador, Sr. and as such is an heir. As explained by respondent judge he believed that an heir has the right to file the petition. Other than the fact that the case was granted, complainant failed to adduce any concrete evidence of partiality, dishonesty or bad faith on the part of the respondent judge. It should be remembered that good faith is always presumed and complainant's bare testimony failed to rebut this presumption.

As to the charge of falsification, complainant herself admitted that the misrepresentation was done by Salvador, Jr. and not by the respondent judge. He cannot, therefore, by any stretch of imagination be held responsible for such falsification.

The only remaining charge against respondent judge is the falsification regarding the twenty (20) TCTs held by Ms. Ulayao and now in *custodia legis* in Branch 45 of the RTC of San Jose, Occidental Mindoro. Again, the undersigned finds that aside from complainant's bare testimony that she was informed by Ms. Ulayao of the falsification she utterly failed to present any evidence to buttress her assertion. She does not even have a copy of the alleged forged deed of sale allegedly used to transfer said titles in the name of Salvador, Sr.[7]

While Justice Reyes found the complaint to be without merit, he still found respondent liable however for failing to prevent any appearance of impartiality on his part. Justice Reyes held in his report:

x x x the investigating justice finds it necessary to deal on another matter which the respondent judge himself testified on. The reception

[7] Report, pp. 24-28.

of evidence for Spec. Proc. No. R-936 was performed by Ms. Aguirre. Although the fact that Ms. Aguirre was the former wife of the petitioner, this fact alone should be considered unprocedural. However, what the investigating justice finds disturbing is that Ms. Aguirre was not the OIC Branch Clerk of Court of Branch 46 but rather she was the OIC Clerk of Court. Respondent judge explained that his OIC Branch Clerk of Court Asuncion Pabellano was busy, hence, unable to conduct the *ex-parte* reception of evidence. Under the circumstances what respondent judge should have done was to dispense with the *ex-parte* reception of evidence and to conduct the hearing himself instead of appointing the OIC Clerk of Court. This would have avoided any appearance of partiality. However, the undersigned does not find this infraction grave enough to warrant a severe penalty. Considering that respondent had already filed his application for optional retirement and only to stress that all judges should at all times be circumspect especially in their official functions, the investigating justice deems it appropriate to recommend the imposition of a fine of ₱5,000.00 on respondent judge.[8]

Justice Reyes then recommended that:

> x x x the complaint against respondent Judge Ernesto P. Pagayatan be DISMISSED. However, in view of the finding that Judge Pagayatan failed to prevent any appearance of impartiality on his part, it is recommended that he be FINED in the amount of ₱5,000.00.[9]

The Court agrees with the report of the Investigating Justice but finds that the recommended fine should be modified.

Administrative complaints leveled against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment.[10] While the Court will not shirk from its responsibility of imposing discipline upon its magistrates, neither will it hesitate to shield them from unfounded suits that disrupt rather than promote the orderly

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[8] *Id.* at 29-30.

[9] *Id.* at 30.

[10] *Dayag v. Gonzales*, A.M. No. RTJ-05-1903, June 27, 2006, 493 SCRA 51.

administration of justice.[11] When the complainant relies on mere conjectures and suppositions and fails to substantiate her claim, such as in the case at bar, the administrative complaint against the judge must be dismissed for lack of merit.[12]

In this case, complainant charged respondent with two acts of falsification. First, for allegedly authorizing the transfer of titles from the name of Blandina to that of Borromeo, Sr. based on forged signatures, when respondent was still Register of Deeds of Occidental Mindoro; and second, for granting Borromeo, Jr.'s petition for issuance of owner's duplicate copy of 62 TCTs, knowing that Borromeo, Jr. was not the owner thereof. She also charged respondent with having an illicit relationship with Elsa, Acting Clerk of Court and ex-wife of Borromeo, Jr., allowing her to exert influence over the decisions of the court, and for keeping Elsa and Prosecutor Salcedo as respondent's 'bagmen.'

Complainant however was not able present proof of her allegations. As to the first charge of falsification, she claims that it was Ulayao, former OIC Registrar of Deeds of Occidental Mindoro, who told her about the circumstances surrounding the transfer of titles from the name of Blandina to that of Borromeo, Sr. and the supposed agreement among Borromeo, Sr., Ulayao, Olano and respondent regarding the said transfer.[13] Ulayao however died on July 31, 2007[14] and could neither refute nor corroborate complainant's story. When asked by the Investigating Justice, complainant also could not present copies of the alleged falsified deeds of sale which, according to her, were the basis for the issuance of the titles in favor of Borromeo, Sr.[15]

Anent the second charge of falsification, complainant claims that respondent granted Borromeo, Jr.'s petition even though

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[11] *Diomampo v. Alpajora*, A.M. No. RTJ-04-1880, October 19, 2004, 440 SCRA 534.

[12] *Diomampo v. Alpajora*, *id.* at 539.

[13] *Rollo*, pp. 2-3; TSN, April 22, 2008, pp. 55-56.

[14] Exhibit "16-A", Respondent's Folder of Exhibits, p. 7.

[15] TSN, April 22, 2008, pp. 56-57.

he knew that Borromeo, Jr. was not the owner of the subject properties. She agreed however, before the Investigating Justice, that respondent's decision in S.P. No. R-936 did not order that new owner's copies of the 62 titles be registered in the name of Borromeo, Jr., and that the same were in fact still in the name of Borromeo, Sr.[16]

As to the charge that respondent was having an immoral relationship with Elsa, complainant admits that she has no personal knowledge about the same, and that her basis for alleging such offense is the "fact" that it is known to everyone in San Jose, Occidental Mindoro.[17] Complainant failed to present any witness, however, to support her charge of immorality.[18] She also failed to present any evidence to substantiate her charge that Prosecutor Salcedo and Elsa were receiving money as "bagmen" of respondent.

The Court cannot give credence to charges based on mere suspicion and speculation.[19] It is settled that in administrative proceedings, the complainant has the burden of proving the allegations in her complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties.[20] Indeed, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[21] As the charges herein being hurled by complainant against respondent are grave in nature, in order for him to be disciplined therefor, the evidence against him should be competent and derived from direct knowledge.[22]

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[16] TSN, April 22, 2008, p. 35.

[17] TSN, April 23, 2008, pp. 63-64, 68-69.

[18] TSN, April 25, 2008, p. 14.

[19] *Diomampo v. Alpajora*, *supra* note 11, at 538.

[20] *Dayag v. Gonzales*, *supra* note 10; *Rondina v. Bello, Jr.*, A.M. OCA IPI No. 04-72-CA-J, July 8, 2005, 463 SCRA 1.

[21] *Dayag v. Gonzales*, *supra* note 10.

[22] *Rondina v. Bello*, *supra* note 20, at 11.

With the failure of complainant to substantiate her claims, the complaint against respondent should be dismissed for lack of merit.

The dismissal of the charges of complainant against respondent, notwithstanding, respondent should still be disciplined for failure to avoid the appearance of partiality, which offense the Investigating Justice correctly appreciated.

When asked during the investigation why Elsa, who is the ex-wife of the petitioner therein, Borromeo, Jr., was designated to receive evidence *ex-parte* in SP No. R-936, when she was not the acting Branch Clerk of Court, but the acting Clerk of Court of the Office of the Clerk of Court (OCC), respondent only answered that it had been their practice to refer *ex-parte* proceedings to the acting clerk of court of the OCC and not to the acting branch clerk of court, because such proceedings were simple; and the branch clerk of court had too much work, while those in the OCC had lesser load.[23] Respondent also said that he didn't see any conflict with the fact that Elsa was the ex-wife of petitioner in S.P. No. R-936, Borromeo, Jr.[24]

The Court has held that a judge must at all times not only be impartial, but maintain the appearance of impartiality. Thus, it is provided in Canons 3 and 4 of the New Code of Judicial Conduct for the Judiciary, which took effect on June 1, 2004, that:

CANON 3
IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

x x x x x x x x x

Sec. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public,

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[23] TSN, AM No. OCA IPI No, 07-2697, May 14, 2008, pp. 20-23.

[24] *Id.* at 23.

the legal profession and litigants in the impartiality of the judge and of the judiciary.

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

For indeed, the appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.[25]

Lower court judges, such as respondent, play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.[26]

Respondent was previously imposed a fine of ₱5,000.00 for gross ignorance of the law in *Domingo v. Pagayatan*.[27] In the present case, the Court finds that for his failure to avoid the appearance of impropriety, a penalty of ₱10,000.00 is proper.[28] Such fine is to be deducted from his retirement benefits which have been withheld pursuant to the Court's Resolution in A.M. No. 12967-Ret. entitled *Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and P.D. 1438, of Hon. Ernesto P. Pagayatan, RTC, Br. 46, San Jose, Occidental Mindoro*, dated July 7, 2008 which approved respondent's

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[25] *Montemayor v. Bermejo, Jr.*, A.M. No. MTJ-04-1535, March 12, 2004, 425 SCRA 403.

[26] *Chan v. Majaducon*, A.M. No. RTJ-02-1697, October 15, 2003, 413 SCRA 354.

[27] A.M. No. RTJ-03-1751, June 10, 2003, 403 SCRA 381.

[28] See *Montemayor v. Bermejo, Jr., supra* note 25.

application for optional retirement under Republic Act No. 910, as amended by Republic Act No. 5095 and Presidential Decree No. 1438 effective at the close of office hours of December 31, 2007 with the proviso that the payment of his retirement benefits shall be held in abeyance pending final resolution of the administrative complaint in AM No. RTJ-07-2089, AM No. RTJ-07-2058, OCA IPI No. 07-2697-RTJ, 07-2698-RTJ and 08-2482-RTJ. The Court, in the same resolution, also granted Judge Pagayatan's request for payment of his terminal leave pay subject to the availability of funds and the usual clearance requirements.

WHEREFORE, the charges filed by Cita Borromeo-Garcia are hereby *DISMISSED* for lack of competent evidence. However, the Court finds Judge Ernesto P. Pagayatan, former Executive Judge of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, *GUILTY* of violating Canon 3, Section 2 and Canon 4, Section 1 of the New Code of Judicial Conduct for the Judiciary for which he is *FINED* in the amount of ₱10,000.00 to be deducted from his retirement benefits which have been withheld pursuant to the Court's Resolution in A.M. No. 12967-Ret. entitled *Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and P.D. 1438, of Hon. Ernesto P. Pagayatan, RTC, Br. 46, San Jose, Occidental Mindoro,* dated July 7, 2008.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 156364. September 25, 2008]

JACOBUS BERNHARD HULST, *petitioner, vs.* **PR BUILDERS, INC.,** *respondent.*

SYLLABUS

COMMERCIAL LAW; CONDOMINIUM ACT (R.A. NO. 4726); FOREIGN NATIONAL CAN OWN PHILIPPINE REAL ESTATE THROUGH PURCHASE OF CONDOMINIUM UNITS OR TOWNHOUSES; APPLICATION. — Under Republic Act (R.A.) No. 4726, otherwise known as the Condominium Act, foreign nationals can own Philippine real estate through the purchase of condominium units or townhouses constituted under the Condominium principle with Condominium Certificates of Title. x x x The law provides that no condominium unit can be sold without at the same time selling the corresponding amount of rights, shares or other interests in the condominium management body, the Condominium Corporation; and no one can buy shares in a Condominium Corporation without at the same time buying a condominium unit. It expressly allows foreigners to acquire condominium units and shares in condominium corporations up to not more than 40% of the total and outstanding capital stock of a Filipino-owned or controlled corporation. Under this set up, the ownership of the land is legally separated from the unit itself. The land is owned by a Condominium Corporation and the unit owner is simply a member in this Condominium Corporation. As long as 60% of the members of this Condominium Corporation are Filipino, the remaining members can be foreigners. Considering that the rights and liabilities of the parties under the Contract to Sell is covered by the Condominium Act wherein petitioner as unit owner was simply a member of the Condominium Corporation and the land remains owned by respondent, then the constitutional proscription against aliens owning real property does not apply to the present case. There being no circumvention of the constitutional prohibition, the Court's pronouncements on the invalidity of the Contract of Sale should be set aside.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Guevarra for petitioner.
Aguirre & Associates Law Firm for respondent.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves petitioner's Motion for Partial Reconsideration.

On September 3, 2007, the Court rendered a Decision[1] in the present case, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. The Decision dated October 30, 2002 of the Court of Appeals in CA-G.R. SP No. 60981 is REVERSED and SET ASIDE. The Order dated August 28, 2000 of HLURB Arbiter Ma. Perpetua Y. Aquino and Director Belen G. Ceniza in HLURB Case No. IV6-071196-0618 is declared NULL and VOID. HLURB Arbiter Aquino and Director Ceniza are directed to issue the corresponding certificates of sale in favor of the winning bidder, Holly Properties Realty Corporation. **Petitioner is ordered to return to respondent the amount of ₱2,125,540.00, without interest, in excess of the proceeds of the auction sale delivered to petitioner.** After the finality of herein judgment, the amount of ₱2,125,540.00 shall earn 6% interest until fully paid.
>
> SO ORDERED.[2] (Emphasis supplied)

Petitioner filed the present Motion for Partial Reconsideration[3] insofar as he was ordered to return to respondent the amount of ₱2,125,540.00 in excess of the proceeds of the auction sale delivered to petitioner. Petitioner contends that the Contract to Sell between petitioner and respondent involved a condominium unit and did not violate the Constitutional proscription against ownership of land by aliens. He argues that the contract to sell will not transfer to the buyer ownership of the land on which

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[1] *Rollo*, p. 593.

[2] *Rollo*, p. 614.

[3] *Id.* at 666.

the unit is situated; thus, the buyer will not get a transfer certificate of title but merely a Condominium Certificate of Title as evidence of ownership; a perusal of the contract will show that what the buyer acquires is the seller's title and rights to and interests in the unit and the common areas.

Despite receipt of this Court's Resolution dated February 6, 2008, respondent failed to file a comment on the subject motion.

The Motion for Partial Reconsideration is impressed with merit.

The Contract to Sell between petitioner and respondent provides as follows:

> Section 3. TITLE AND OWNERSHIP OF UNIT
>
> a. Upon full payment by the BUYER of the purchase price stipulated in Section 2 hereof, x x x, the SELLER shall deliver to the BUYER the Deed of Absolute Sale **conveying its rights, interests and title to the UNIT and to the common areas appurtenant to such UNIT**, and the corresponding **Condominium Certificate of Title** in the SELLER's name; x x x
>
> b. The Seller shall register with the proper Registry of Deeds, the Master Deed with the Declaration of Restrictions and other documents and shall immediately comply with all requirements of **Republic Act No. 4726 (The Condominium Act)** and Presidential Decree No. 957 (Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof). It is hereby understood that **all title, rights and interest so conveyed shall be subject to the provisions of the Condominium Act**, the Master Deed with Declaration of Restrictions, the Articles of Incorporation and By-Laws and the Rules and Regulations of the Condominium Corporation, zoning regulations and such other restrictions on the use of the property as annotated on the title or may be imposed by any government agency or instrumentality having jurisdiction thereon.[4] (Emphasis supplied)

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[4] *Rollo*, p. 294.

Under Republic Act (R.A.) No. 4726, otherwise known as the Condominium Act, foreign nationals can own Philippine real estate through the purchase of condominium units or townhouses constituted under the Condominium principle with Condominium Certificates of Title. Section 5 of R.A. No. 4726 states:

> SECTION 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation; Provided, however, That where the common areas in the condominium project are held by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporations at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. **Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.** (Emphasis supplied)

The law provides that no condominium unit can be sold without at the same time selling the corresponding amount of rights, shares or other interests in the condominium management body, the Condominium Corporation; and no one can buy shares in a Condominium Corporation without at the same time buying a condominium unit. It expressly allows foreigners to acquire condominium units and shares in condominium corporations up to not more than 40% of the total and outstanding capital stock of a Filipino-owned or controlled corporation. Under this set up, the ownership of the land is legally separated from the unit itself. The land is owned by a Condominium Corporation and the unit owner is simply a member in this Condominium Corporation.[5] As long as 60% of the members of this Condominium Corporation are Filipino, the remaining members can be foreigners.

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[5] See *City Treasurer of Makati v. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005, 474 SCRA 258.

Considering that the rights and liabilities of the parties under the Contract to Sell is covered by the Condominium Act wherein petitioner as unit owner was simply a member of the Condominium Corporation and the land remains owned by respondent, then the constitutional proscription against aliens owning real property does not apply to the present case. There being no circumvention of the Constitutional prohibition, the Court's pronouncements on the invalidity of the Contract of Sale should be set aside.

WHEREFORE, the Motion for Partial Reconsideration is *GRANTED*. Accordingly, the Decision dated September 3, 2007 of the Court is *MODIFIED* by deleting the order to petitioner to return to respondent the amount of ₱2,125,540.00 in excess of the proceeds of the auction sale delivered to petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 163838. September 25, 2008]

WALLEM MARITIME SERVICES, INC. and WALLEM SHIP-MANAGEMENT HONGKONG, LIMITED, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and TIBURCIO D. DELA CRUZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; CONCEPT OF PERMANENT DISABILITY

UNDER THE LABOR CODE APPLIED IN CASES OF SEAFARERS; RELEVANT RULINGS, CITED. — The more accurate view of Section 20-B(3) of the POEA-SEC is that espoused by respondent. In his Comment and Memorandum, respondent cited *Remigio v. National Labor Relations Commission* in which the Court referred to the definition of permanent disability under the Labor Code to interpret Section 20-B(3), thus: The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects." Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers x x x. Applying the foregoing definition of permanent disability, the Court therein held that, notwithstanding the certification issued by the company-designated physician that in 8-10 months the seafarer therein may already work as a pianist, the fact remains that for the past 11 to 13 months, the latter had not been able to perform his customary work as a drummer, and "this, by itself, already constitutes permanent total disability." The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad,* in which it was reiterated that permanent disability means the inability of a worker to perform his job for more than 120 days. Also in *Philmare, Inc. v. Suganob*, notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the latter suffered from permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months. Similarly, in *Micronesia Resources v. Cantomayor*

and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*, the Court declared the seafarers therein to have suffered from a permanent disability after taking evidence into account that they had remained under treatment for more than 120 days, and were unable to work for the same period.

2. ID.; ID.; ID.; ID.; TRUE TEST TO DETERMINE WHETHER A SEAFARER SUFFERED FROM A PERMANENT DISABILITY; CASE AT BAR. — [I]t is not accurate to state — as the CA and the NLRC did — that respondent is presumed permanently disabled just because, after 120 days from his repatriation due to injury, he was not declared fit to resume sea duty by Dr. Lim. Nor would it be correct for petitioners to claim that respondent does not suffer from permanent disability just because at the end of an 8-month period of evaluation and treatment, Dr. Lim had declared him fit to work. Rather, the true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days. Under Section 20-B(3) of the POEA-SEC, it is a requirement *sine qua non* to the filing of a claim for disability benefit that the claimant seafarer be examined by a company-designated physician within three days from his repatriation. But whatever medical report said company-designated physician may issue will not be conclusive on the claimant, for the latter may dispute said report by promptly consulting a physician of his own choice. However, neither the medical report issued by the company-designated physician nor the medical report issued by claimant's physician of choice is binding on the labor tribunals and the courts, for both reports will have to be evaluated based on their inherent merit. In a number of cases, the Court disregarded the medical report issued by the company-designated physician that the seafarer was fit to work in view of evidence of record that the latter had in fact been unable to engage in his regular work for more than 120 days. Indeed, the records of the present case are replete with evidence that respondent was unable to resume work as messman for more than 120 days from his repatriation. In all, respondent was under medical evaluation and treatment for almost eight months. During that period, he was unable to resume his work as messman. In fact, twice within that period, Dr. Lim certified that he was not fit to resume sea duties. Certainly,

the foregoing evidence conclusively established that respondent had suffered from a permanent disability.

APPEARANCES OF COUNSEL

Sugay Law for petitioners.
Emmanuel E. Sandicho for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 28, 2004 Court of Appeals (CA) Decision,[1] which affirmed with modification the May 26, 2003 Decision[2] and October 30, 2003 Resolution[3] of the National Labor Relations Commission (NLRC) on the claim for disability benefits of Tiburcio D. dela Cruz (respondent) against Wallem Maritime Services, Inc. (WMSI) and Wallem Shipmanagement Hongkong Limited, (WSHL).

The material facts are of record.

Petitioner WMSI, acting as manning agent of petitioner WSHL, hired respondent as messman under an employment contract which provides:

1.1. Duration of Contract: 9 Months	1.2. Position: Messman
1.3. Basic Monthly Salary: US$407.00	1.4. Hours of Work: 44 Hours/Week
1.5. Overtime: US$226.2/mo.for 85 hrs.	1.6. Vacation Leave with Pay – US$2.66/hr. Excess Overtime – US$2.66/hr.
1.7. Point of Hire MANILA	Seniority Pay – US$5.25/ Month

[1] Penned by Associate Justice Perlita J. Tria Tirona with the concurrence of Associate Justices Conrado M. Vasquez, Jr. and Jose C. Reyes, Jr.; *rollo*, p. 36.

[2] *Id.* at 23.

[3] *Id.* at 32.

The terms and conditions of the Revised Employment contract [POEA-SEC] governing the employment of Filipino seafarers approved per Department Order No. 33 and Memorandum Circular No. 55, series of 1996, shall be strictly and faithfully observed.[4]

Respondent was deployed on November 1, 1999[5] to board his vessel *M/V Vanadis* at Fujairah, United Arab Emirates where his work as messman involved manually carrying and loading seastores/supplies.

Sometime in March 2000, respondent complained of pain on his left groin radiating to his lower back area. He was examined in Fujairah by petitioner's accredited physician, who issued a medical certificate that respondent was not fit to resume sea duties.[6] Thus, on March 22, 2000, respondent was repatriated to the Philippines where, from March 23, 2000 through November 22, 2000, he was examined and treated at the Metropolitan Hospital under Dr. Robert D. Lim and other physicians accredited with petitioners.

Petitioners paid for the costs of respondent's treatment.[7] They also paid him sickness allowance equivalent to his monthly wage, but only for the period of 120 days or from March 23, 2000 to July 24, 2000.[8]

On November 22, 2000, Dr. Lim issued the following medical report:

This is a follow-up report on Mr. Tiburcio dela Cruz diagnosed to have disc dessication, L3-4 and L4-L5 decompression laminectomy, L4-L5 on May 27, 2000.

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[4] *Rollo*, p. 205.

[5] *Id.* at p. 206.

[6] There is no copy of the medical certificate on file, but petitioners do not dispute its existence and due execution. In their Petition for Review, petitioner cited the not-fit-to-work medical certificate issued by its accredited physician in Fujairah (*id.* at 79-80).

[7] *Id.* at 185-188.

[8] *Id.* at 189-192.

Patient was initially seen here at Metropolitan Hospital on March 23, 2000.

He has been under the care of our orthopedic surgeon.

He is now asymptomatic.

Our orthopedic surgeon opines that patient is now fit to work.

He was pronounced fit to resume sea duties as of November 22, 2000.

Final diagnosis – Disc dessication, L3-L4 and L4-L5

– S/P Decompression Laminectomy, L4-L5.[9] (Emphasis supplied)

Respondent signed a Certificate of Fitness for Work whereby he released petitioners from any liability for his injury.[10]

On August 2, 2001, respondent filed with the NLRC Arbitration Branch (Labor Arbiter) a Complaint against petitioners for payment of permanent total disability benefits in the amount of US$50,000.00.[11] Claiming that the November 22, 2000 fit-to-work medical report issued by Dr. Lim was false, respondent argued that he was actually suffering from a total permanent disability as established by the following evidence: first, he was certified not fit to work by petitioners' accredit physician in Fuijairah (Annex "C");[12] and second, the Overseas Workers' Welfare Administration (OWWA) issued to him an Impediment Grade – Medical Evaluation Report (Annex "E"), which stated that he was suffering from an impediment grade six and that he was entitled to 50% disability benefits.[13]

Petitioners disputed the factual basis of respondent's claim.[14]

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[9] *Rollo*, p. 109.

[10] CA *rollo*, p. 82.

[11] *Id.* at 195. It is noted that copies of the position paper in both the *rollo* and CA *rollo* do not contain page 5.

[12] Complainant's Position Paper, *rollo*, p. 198.

[13] *Id*.

[14] *Id.* at 177.

In a Decision dismissing the complaint, the Labor Arbiter (LA) held that Dr. Lim's medical report was conclusive, because the latter was the company-designated physician who actually examined and treated respondent for eight months.[15] Dr. Lim's findings could not be overturned by a contrary medical report issued by a doctor at OWWA who did not actually examine respondent but merely referred to earlier medical reports on the latter's condition prior to treatment.[16] Neither can Dr. Lim's findings be outweighed by the medical report issued in Fujairah months before respondent underwent treatment in the Philippines.[17]

Respondent appealed to the NLRC which issued a Decision dated May 26, 2003 reversing the LA Decision and partly granting respondent's claim, thus:

> x x x To our mind, complainant-appellant submitted substantial and preponderant evidence to support his claim for disability pay taking into consideration the fact that it was the company physician in Fujairah, designated by respondent-appellee [herein petitioners] Wallem Shipmanagement Limited itself who declared respondent unfit for duty, ***which declaration held ground even after the lapse of the 120 days treatment period. We also considered the fact that complainant-appellant was never again summoned for sea duty by respondents-appellees, a fact which likewise reasonably lead to the conclusion that he is no longer fit for work.***
>
> The only thing left is the determination of the rightful amount which complainant-appellant [herein respondent] shall be entitled to receive under the circumstances of the instant case. We cannot, however, award total or one hundred percent disability pay in favor of complainant [herein respondent] for lack of basis for such amount. Submitted by complainant-appellant [herein respondent] on record is an Impediment grade of Six (6) issued by the Overseas Worker's Welfare Administration (OWWA), an agency tasked to provide or facilitate welfare benefits for both seabased and landbased overseas Filipino workers.

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[15] LA Decision, *rollo*, pp. 103-104, 106.

[16] *Id.* at 104-105.

[17] *Id.* at 105.

x x x x x x x x x

WHEREFORE, after extended and careful deliberations on both factual circumstances and legal conclusions herein considered, the assailed decision of the Labor Arbiter dated 14 September 2001 is hereby REVERSED and SET ASIDE. Respondents-appellees [herein petitioners] are ordered to pay complainant-appellant [herein respondent] his disability benefit in the amount of twenty-five thousand U.S. dollars (US$25,000.00) or its Philippine peso equivalent at the time of actual payment plus attorney's fees of twenty-five percent (25%) of said amount or an aggregate sum of thirty-seven thousand five hundred U.S. Dollars (US$37,500.00) or its equivalent in Philippine pesos at the time of actual payment.

SO ORDERED.[18] (Emphasis supplied)

Petitioners filed a motion for reconsideration but the NLRC denied it.[19]

Petitioners questioned the NLRC decision and resolution before the CA but the latter affirmed the same, albeit with modification, to wit:

WHEREFORE, the Decision dated May 26, 2003 rendered by the public respondent National Labor Relations Commission in NLRC CA No. 030814-02 (NLRC OFW (M) 2001-06-278-30) is hereby AFFIRMED with modification that the twenty-five (25%) percent attorney's fees is hereby DELETED.

SO ORDERED.[20]

Without first filing a motion for reconsideration from the CA Decision, petitioners sought its reversal by the Court on the following grounds:

5.1. The Honorable Court of Appeals gravely erred when it refused to correct or to reverse the palpably erroneous interpretation made by the National Labor Relations Commission of Section 20 [B]{3} of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels.

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[18] NLRC Decision, *rollo*, pp. 29-30.

[19] *Id.* at 32.

[20] *Id.* at 45-46.

> 5.1.1. Section 20[B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels could not have been intended to force or to constrain shipowner's accredited doctors to either declare an ailing seafarer fit to resume sea duties or permanently disabled within a period of one hundred twenty (120) days. To interpret Section 20 [B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels as forcing or constraining ship-owners' accredited doctors to either declare an ailing seafarer fit to resume sea duties or permanently disabled within a period of only one hundred twenty (120) days would be to defeat the very purpose of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels which is to ensure that Filipino seafarers are able to obtain the best possible terms of employment.

5.2. Had the Honorable Court of Appeals, in the exercise of its jurisdiction over the subject petition for *certiorari* filed before it, chosen to correct or to reverse the palpably erroneous interpretation made by the National Labor Relations Commission of Section 20 [B][3] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, it would have been left with no recourse but to affirm the Decision dated 22 October 2001 issued by the Hon. Labor Arbiter Napoleon M. Menese.

> 5.2.1. The evidence adduced by the parties before the Hon. Labor Arbiter Napoleon M. Menese very plainly establishes the lack of merit of respondent's claim for disability compensation.[21]

Petitioners' recourse is in vain.

The terms and conditions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) which the parties incorporated into their employment contract grant respondent compensation and benefits should he suffer from an illness or injury, subject to the following conditions:

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[21] Petition, *rollo*, pp. 72-73.

Section 20-B. *Compensation and Benefits for Injury or Illness*. - The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. ***Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.***

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. (Emphasis supplied)

The NLRC interpreted Section 20-B(3) to mean that if a seafarer is repatriated on the basis of a certification issued by a company-designated physician overseas that said seafarer is not fit to resume sea duties, such finding shall remain valid until the seafarer is declared fit to work by the company-designated physician in the Philippines; but if, after 120 days from the repatriation of the seafarer, no such fit-to-work declaration is made by the company-designated physician in the Philippines, the presumption will arise that the seafarer suffered from a

permanent disability based on the earlier not-fit-to-work assessment made by the company-designated physician overseas. In the case of respondent, the NLRC ruled that the assessment by petitioners' accredited physician in Fujiarah that respondent was not fit to work held sway because Dr. Lim failed to overturn such finding within 120 days from respondent's repatriation.[22]

The CA sustained this view of the NLRC.[23]

In disputing the foregoing interpretation of the CA and the NLRC, petitioners argue that the initial assessment made by a company-designated physician abroad is intended for no other purpose than to determine whether a seafarer should be repatriated or not. [24] Such initial assessment cannot influence any decision on the fitness of a seafarer to perform sea duties for, under Section 20-B(3), it is only the local company-designated physician — in the present case, Dr. Lim — who can pronounce whether the seafarer suffers from some disability.[25]

Moreover, petitioners contend that, contrary to the view adopted by the CA and the NLRC, Section 20-B(3) does not set any time limit within which the local company-designated physician should issue an assessment, just as there is no time limit within which the seafarer can avail himself of treatment free of cost. The 120-day limit found in Section 20-B(3) refers merely to the period within which the seafarer shall be paid sickness allowance, but it has nothing to do with when the latter should be assessed fit or not fit for duty. Petitioners explain that if it is made mandatory on the company-designated physician to declare within 120-days that the seafarer is fit or not fit for duty, the effect would be to also restrict to a period of 120 days the entitlement of said seafarer to free medical treatment.[26]

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[22] *Supra* note 18.

[23] CA Decision, *rollo*, pp. 41-42.

[24] Petition, *id.* at 78-79.

[25] Memorandum, *id.* at 567, 576.

[26] *Rollo*, pp. 570-572.

The Court agrees with the result of the CA decision, but differs with the CA's adoption of the NLRC interpretation of Section 20-B(3), just as it disagrees with petitioners' interpretation of said provision.

The more accurate view of Section 20-B(3) of the POEA-SEC is that espoused by respondent. In his Comment[27] and Memorandum,[28] respondent cited *Remigio v. National Labor Relations Commission*[29] in which the Court referred to the definition of permanent disability under the Labor Code to interpret Section 20-B(3), thus:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."
>
> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers x x x.[30]

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

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[27] *Id.* at 485-490.

[28] *Id.* at 594-600.

[29] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

[30] Citing *Crystal Shipping, Inc. v. Natividad*, G.R. No. 154798, October 20, 2005, 473 SCRA 559.

> ***Sec. 2. Disability.— (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.***
>
> (***b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days***, except as otherwise provided for in Rule X of these Rules.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body. (Emphasis supplied)

Applying the foregoing definition of permanent disability, the Court therein held that, notwithstanding the certification issued by the company-designated physician that in 8-10 months the seafarer therein may already work as a pianist, the fact remains that for the past 11 to 13 months, the latter had not been able to perform his customary work as a drummer, and "this, by itself, already constitutes permanent total disability."

The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad*, in which it was reiterated that permanent disability means the inability of a worker to perform his job for more than 120 days.[31] Also in *Philmare, Inc. v. Suganob*,[32] notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the latter suffered from permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months. Similarly, in *Micronesia Resources v. Cantomayor*[33] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*,[34] the Court declared

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[31] See Resolution in G.R. No. 154798, February 12, 2007.

[32] G.R. No. 168753, July 9, 2008.

[33] G.R. No. 156573, June 19, 2007, 525 SCRA 42.

[34] G.R. No. 165934, April 12, 2006, 487 SCRA 248.

the seafarers therein to have suffered from a permanent disability after taking evidence into account that they had remained under treatment for more than 120 days, and were unable to work for the same period.

Thus, it is not accurate to state — as the CA and the NLRC did — that respondent is presumed permanently disabled just because, after 120 days from his repatriation due to injury, he was not declared fit to resume sea duty by Dr. Lim. Nor would it be correct for petitioners to claim that respondent does not suffer from permanent disability just because at the end of an 8-month period of evaluation and treatment, Dr. Lim had declared him fit to work. Rather, the true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days.

Under Section 20-B(3) of the POEA-SEC, it is a requirement *sine qua non* to the filing of a claim for disability benefit that the claimant seafarer be examined by a company-designated physician within three days from his repatriation. But whatever medical report said company-designated physician may issue will not be conclusive on the claimant, for the latter may dispute said report by promptly consulting a physician of his own choice. However, neither the medical report issued by the company-designated physician nor the medical report issued by claimant's physician of choice is binding on the labor tribunals and the courts, for both reports will have to be evaluated based on their inherent merit.[35]

In a number of cases, the Court disregarded the medical report issued by the company-designated physician that the seafarer was fit to work in view of evidence of record that the

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[35] *Maunlad Transport, Inc. v. Manigo, Jr.*, G.R. No. 161416, June 13, 2008, citing *Crystal Shipping, Inc. v. Natividad, supra* note 30, *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission,* G.R. No. 156573, June 19, 2007, 525 SCRA 42 and *Cadornigara v. National Labor Relations Commission*, G.R. No. 158073, November 23, 2007, 538 SCRA 363.

latter had in fact been unable to engage in his regular work for more than 120 days.[36]

Indeed, the records of the present case are replete with evidence that respondent was unable to resume work as messman for more than 120 days from his repatriation. The evidence consist of medical records that from March 23 to 27, 2000, respondent underwent EMG-NCV of the lumbar area and renal ultrasound but the results in both were negative.[37] On April 10, 2000, respondent underwent EMG-NCV and Magnetic Resonance Imaging of the lumbosacral spine, and the result showed that he suffered from a mild disc dessication bulging L3-L4, L4-L5,[38] for which he was advised to continue physical therapy for another month.[39] On May 26, 2000, respondent was admitted for laminectomy and discectomy, after which he remained confined in the hospital where he was placed in a chairback brace for immobilization and provided occupational and physical therapy. It was only on June 7, 2000 that he was discharged.[40] Over several weeks, respondent regularly returned for check up with Dr. Lim who advised him to continue rehabilitation.[41] Upon check up on July 14, 2000, respondent complained of lumbosacral pain, for which he was advised to continue physical therapy.[42] On that occasion, Dr. Lim expressly stated in his medical report that "[b]ased on his present medical condition, patient will not be fit to resume sea duties in approximately 2-3 months time."[43] On July 28, 2000, respondent complained of the same pain and was advised to undergo re-evaluation and repeat EMG-NCV

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[36] *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585; *Philimare, Inc. v. Suganob*, *supra* note 32.

[37] Annexes "2" and "3" for petitioners, *rollo*, pp. 217-218.

[38] Annex "5" for petitioners, *id.* at 221.

[39] *Id*.

[40] Annex "9" of petitioners, *id.* at 223-224.

[41] Annex "10" of petitioners, *id.* at 225-226.

[42] Annex "11" of petitioners, *id.* at 227.

[43] *Id*.

studies.[44] Thus, on August 18, 2000, Dr. Lim again issued his finding that "[based] on his present medical condition, patient will not be fit to resume sea duties for the next two months barring unforeseen events."[45]

In all, respondent was under medical evaluation and treatment for almost eight months. During that period, he was unable to resume his work as messman. In fact, twice within that period, Dr. Lim certified that he was not fit to resume sea duties. Certainly, the foregoing evidence conclusively established that respondent had suffered from a permanent disability.

As to whether respondent's permanent disability was total or partial, the Court cannot alter the concurrent finding of the CA and the NLRC, as respondent did not appeal therefrom.

WHEREFORE, the petition is *DENIED*. The Decision dated May 28, 2004 of the Court of Appeals is *AFFIRMED*.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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[44] Annex "12" of petitioners, *id.* at 228.

[45] Annex "13" of petitioners, *id.* at 229.

THIRD DIVISION

[G.R. No. 164850. September 25, 2008]

REYNALDO Q. AGULLANO, *petitioner, vs.* **CHRISTIAN PUBLISHING and CATALINA LEONEN PIZARRO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; TWIN NOTICE REQUIREMENT FOR A VALID DISMISSAL OF AN EMPLOYEE. — In *R.B. Michael Press v. Nicanor C. Galit*, this Court had occasion to reiterate that under the twin notice requirement, the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. To this, we added: Not to be taken lightly, of course, is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

2. ID.; ID.; ID.; PROCEDURE FOR TWIN NOTICE AND HEARING REQUIREMENT AS EXPLAINED IN *KING OF KINGS TRANSPORT V. MAMAC*. — The procedure for this twin notice and hearing requirement was thoroughly explained in *King of Kings Transport v. Mamac*, in this wise: (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain

a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees. (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement. (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

3. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS REQUIREMENT, NOT COMPLIED WITH IN CASE AT BAR. — A careful examination of the disciplinary procedure adopted by the respondent which led to the dismissal of petitioner shows that the respondent merely paid lip service to the foregoing procedural due process requirement. First, the March 31, 2000 memorandum of respondent issued to the petitioner, after the latter failed to attend the DECS and the PIAP meetings, obviously did not satisfy the first written notice requirement. Albeit this memorandum required the petitioner to explain his absence in those two important meetings, there was clearly no intimation that the petitioner would be terminated from employment for this singular offense. No such intention to dismiss the petitioner can be inferred from the memorandum because this one infraction cannot be equated with "gross or habitual neglect," nor can it be characterized as "fraud or willful breach" by the petitioner of the respondents' trust reposed in him. This was even borne out by subsequent events, as it was not until four months later in the July 25, 2000 memorandum that respondents alluded to petitioner's termination from

employment. Second, even if we assume that the March 31, 2000 memorandum was already intended to serve as the first written notice, there would still be a breach of the procedural due process requirement, because no hearing or conference was called by the respondent at which petitioner could have presented his defenses. The absence of a hearing or conference likewise vitiates the July 25, 2000 memorandum. As we said in *R.B. Michael Press*: (T)here is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught *in flagrante* or when the evidence of the commission of the offense is strong. Third, if the July 25, 2000 memorandum is to be considered the first notice, it would suffer from patent infirmities, and not just from the lack of a hearing or conference. It does not grant the petitioner an opportunity to answer the charges of absenteeism and tardiness; it does not give him time to seek the assistance of counsel; and most tellingly, it was to be followed the very next day with the notice of termination, effective immediately. The respondents lamely proffer the hypothesis that there was substantial compliance with the twin notice and hearing requirement. Unfortunately, the records are bereft of any proof of compliance, much less substantial compliance, with the procedure outlined in *King of Kings Transport*. In sum, we hold that the dismissal of petitioner from employment was attended by a violation, by the respondents, of procedural due process.

APPEARANCES OF COUNSEL

Ateneo Human Rights Center/Ateneo Law School Legal Services Center, Clinical Legal Education Program for petitioner.
Eugene Michael B. De Vera for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner

Reynaldo Q. Agullano seeking the reversal of the Decision[1] dated October 29, 2003 of the Court of Appeals (CA), and its Resolution of July 28, 2004, denying petitioner's motion for reconsideration. The assailed CA decision reversed the National Labor Relations Commission (NLRC) decision of January 22, 2003 which, in turn, affirmed the decision of the Labor Arbiter (LA) finding the respondent liable for having illegally dismissed the petitioner.

The facts of the case are as follows:

On February 15, 1999, respondent Christian Publishing, a single proprietorship engaged in the business of publishing books and printing in general, and owned by Catalina Leonen Pizarro, hired petitioner Reynaldo Q. Agullano as printing manager, with a monthly salary of ₱11,000.00. It was part of petitioner's duties to meet with prospective clients and to attend meetings of printing organizations.

On March 30, 2000, petitioner failed to attend a pre-bidding meeting at the Department of Education, Culture and Sports (DECS) over certain DECS projects to which respondent had pre-qualified. On the same day, petitioner also missed the general membership meeting of the Printing Industries Association of the Philippines (PIAP). The following day, respondent's Human Resources Department (HRD) Coordinator, Ms. Venus F. Barnuevo, sent to petitioner a memorandum which reads:

> Please be informed that you have been negligent in attending business meetings designated by the Management that needs your presence. You are required to submit an explanation letter within 24 hrs. upon receiving this memo regarding your absence at DECS Meeting and PIAP General Membership meeting last March 30, 2000.[2]

On the same day, petitioner submitted his explanation through a letter, wherein he apologized to respondent saying that he

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[1] Penned by Associate Justice Danilo B. Pine, with Presiding Justice Cancio C. Garcia (later a member of this Court), and Associate Justice Renato C. Dacudao, concurring; *rollo*, pp. 33-41, 58.

[2] *Rollo*, p. 69.

forgot about these engagements. Petitioner explained that he arrived at the office in short pants and had to return home to change his attire, but that there was an on-going transport strike which caused his inability to keep the appointments.

On July 25, 2000, respondent, through the HRD Coordinator, sent petitioner a memorandum which reads:

> Your habitual absences and tardiness has been noticed but you continue to exhibit such despite verbal warnings. You have been absent for one (1) week from July 3-8, then July 12, 22 & 24, 2000 and several days for the month of May and June. Brought about by the present financial situation of the company, we regret to inform you that the company can't tolerate employees who post a burden more to the situation.[3]

On July 26, 2000, respondent terminated petitioner's employment. The termination letter reads:

> Please be informed that your function as Printing Manager is terminated effective this date due to multiple violations made against company rules and regulations as listed below:
>
> 1. Habitual absences the following dates:
>
>   July 3-8, 2000
>   July 12, 22 & 24
>
> 2. Several Saturday absences and tardiness for the month of May & June 2000;
>
> 3. Absences on DECS and PIAP meeting you are delegated to attend on March 20, 2000.
>
> You continued to exhibit such, despite verbal warnings. We regret to inform you that the company cannot tolerate such behavior.[4]

Aggrieved, petitioner filed a complaint[5] with the NLRC for illegal dismissal and damages. After hearing, LA Salimathar V.

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[3] *Id.* at 6.

[4] *Id.*

[5] Docketed as NLRC-NCR-Case No. 00-07-03951-00.

Nambi, on February 28, 2002, rendered a Decision, the decretal portion of which states:

> IN VIEW OF THE FOREGOING, the dismissal of complainant is hereby declared illegal. However, in view of the strained relationship between complainant, instead of reinstatement, respondents are hereby ordered to pay complainant separation pay of one (1) month salary for every year of service from the date of employment to the date of termination.
>
> In addition, respondents are also ordered to pay complainant a service incentive leave pay of five (5) days from date of employment to date of dismissal and pro-rated 13th month pay.
>
> The Computation and Examination Unit of this Office is hereby directed to compute complainant's entitlements which shall form part of this decision.
>
> All other claims are hereby DISMISSED for lack of basis.
>
> SO ORDERED.[6]

Dissatisfied with the LA's decision, petitioner appealed to the NLRC, and on January 22, 2003, the NLRC decided the case, disposing as follows:

> WHEREFORE, the assailed decision of 28 February 2002 is hereby MODIFIED in the sense that respondents-appellees are Ordered to pay the complainant-appellant his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of this decision.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[7]

Respondents sought reconsideration of the NLRC decision, but the same was denied in a Resolution[8] dated May 6, 2003.

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[6] *Id.* at 62-63.

[7] *Id.* at 52.

[8] *Id.* at 55.

Respondents then filed with the CA a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, imputing grave abuse of discretion to the NLRC for its modification of the LA decision.

On October 29, 2003, the CA rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the assailed decision dated January 22, 2003 of the Honorable Commission as well as the decision dated February 28, 2002 of the Honorable Labor Arbiter are hereby ANNULLED and SET ASIDE. The dismissal of private respondent Reynaldo Agullano from employment is hereby declared valid and in accordance with law.

Petitioner filed a motion for reconsideration, but the CA denied the same in a Resolution[9] dated July 28, 2004.

Thus, the instant petition.

The core issue in this controversy is whether petitioner was illegally dismissed.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. In a recent decision,[10] this Court said that dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.

The just causes for termination of employment are enumerated in Article 282 of the Labor Code of the Philippines. In upholding the validity of Agullano's dismissal from employment, the CA relied on the aforesaid article, more specifically paragraphs (b) and (c) thereof, *viz.*:

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

[10] *Ma. Wenelita Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, citing *Shoemart, Inc. v. NLRC*, G.R. No. 74229, August 11, 1989.

ART. 282. An employer may terminate an employment for any of the following causes:

x x x x x x x x x

(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;

Agreeing with respondent's position that the petitioner's acts amounted to these two just causes for termination, the CA expounded, thus:

> Generally, tardiness and absenteeism, like abandonment, are a form of neglect of duty. In one case, acts of insubordination, coupled with habitual tardiness, were found sufficient causes for dismissal, especially considering the fact that the employees involved were not mere rank and file employees but supervisors who owed more than the usual fealty to the organization and were therefore expected to adhere to its rules in an exemplary manner.
>
> Clearly, [petitioner's] unexplained absences and tardiness constitute habitual and gross neglect of duties. x x x
>
> It must also be remembered that [petitioner] is a managerial employee, and as such, he enjoys the trust and confidence of his employer. The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.[11]

On the basis of this exposition, there is, ostensibly, compliance with the first facet of a valid dismissal as there appears a just cause therefor.

However, on the second requisite, *i.e.*, procedural due process, we find the respondent's compliance with the twin notice requirement sadly wanting and inadequate.

In *R.B. Michael Press v. Nicanor C. Galit*,[12] this Court had occasion to reiterate that under the twin notice requirement,

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

[12] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. To this, we added:

> Not to be taken lightly, of course, is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

The procedure for this twin notice and hearing requirement was thoroughly explained in *King of Kings Transport v. Mamac*,[13] in this wise:

> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative

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[13] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

A careful examination of the disciplinary procedure adopted by the respondent which led to the dismissal of petitioner shows that the respondent merely paid lip service to the foregoing procedural due process requirement.

First, the March 31, 2000 memorandum of respondent issued to the petitioner, after the latter failed to attend the DECS and the PIAP meetings, obviously did not satisfy the first written notice requirement. Albeit this memorandum required the petitioner to explain his absence in those two important meetings, there was clearly no intimation that the petitioner would be terminated from employment for this singular offense. No such intention to dismiss the petitioner can be inferred from the memorandum because this one infraction cannot be equated with "gross or habitual neglect," nor can it be characterized as "fraud or willful breach" by the petitioner of the respondents' trust reposed in him. This was even borne out by subsequent events, as it was not until four months later in the July 25, 2000 memorandum that respondents alluded to petitioner's termination from employment.

Second, even if we assume that the March 31, 2000 memorandum was already intended to serve as the first written notice, there would still be a breach of the procedural due process requirement, because no hearing or conference was called by the respondent at which petitioner could have presented his defenses. The absence of a hearing or conference likewise vitiates the July 25, 2000 memorandum. As we said in *R.B. Michael Press*:[14]

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[14] *Supra* note 12.

(T)here is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught *in flagrante* or when the evidence of the commission of the offense is strong.

Third, if the July 25, 2000 memorandum is to be considered the first notice, it would suffer from patent infirmities, and not just from the lack of a hearing or conference. It does not grant the petitioner an opportunity to answer the charges of absenteeism and tardiness; it does not give him time to seek the assistance of counsel; and most tellingly, it was to be followed the very next day with the notice of termination, effective immediately.

The respondents lamely proffer the hypothesis that there was substantial compliance with the twin notice and hearing requirement. Unfortunately, the records are bereft of any proof of compliance, much less substantial compliance, with the procedure outlined in *King of Kings Transport*.[15]

In sum, we hold that the dismissal of petitioner from employment was attended by a violation, by the respondents, of procedural due process.

Given these findings, we find *apropos* our ruling in *Agabon v. NLRC,*[16] in which this Court made the following pronouncement:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights x x x. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later" x x x.

Under the Civil Code, nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

x x x x x x x x x

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[15] *Supra* note 13.

[16] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-617.

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. x x x.

Applying this principle in the light of the circumstances surrounding the case at bench, we deem it appropriate to fix the amount of nominal damages at ₱30,000.00. We likewise note as proper the petitioner's entitlement to the money equivalent of the five-day service incentive leave for the one year period of his employment, as found by the LA.

With this disquisition, we find no necessity to discuss the other issues raised in the pleadings.

WHEREFORE, premises considered, the Decision dated October 29, 2003 and the Resolution of July 28, 2004 of the Court of Appeals are *AFFIRMED WITH THE MODIFICATION* that respondents failed to comply with procedural due process in the termination of petitioner. Accordingly, respondents are ordered to pay petitioner the sum of ₱30,000.00, by way of nominal damages, and the money equivalent of the five-day service incentive leave to which he is entitled.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168309. September 25, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MARIAN D. TORRES, MARICAR D. TORRES and COURT OF APPEALS (Special Third Division),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; FACTUAL FINDINGS THEREOF ARE GENERALLY CONCLUSIVE; EXCEPTIONS. — While it is true that factual findings of administrative agencies that are affirmed by the CA are conclusive upon and generally not reviewable by this Court, the rule admits of the following exceptions, to wit: (1) **when the findings are grounded entirely on speculation, surmises, or conjectures**; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the findings went beyond the issues of the case or are contrary to the admissions of the parties to the case; (7) when the findings are contrary to those of the trial court or the administrative agency; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the pleadings are not disputed; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) **when certain relevant facts not disputed by the parties were manifestly overlooked, which, if properly considered, would justify a different conclusion**.

2. ID.; ID.; ADMINISTRATIVE CHARGES MUST BE SUBSTANTIATED. — Given the particular circumstances surrounding this case, it cannot be justly and validly inferred that private respondents indeed falsified their DTRs without the presentation of the corresponding DTRs themselves, since these DTRs were supposed to be the subject of the falsification. A party to an administrative case must prove his affirmative allegation with substantial evidence, and the complainant before

the Office of the Ombudsman could not have established proof of the falsification absent the alleged falsified documents.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Esguerra Baluyut Benitez & Mariano Law Offices for private respondents.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is the Motion for Reconsideration[1] of private respondents Marian and Maricar Torres of our Decision dated January 29, 2008 reversing and setting aside the Decision dated January 6, 2004 and the Resolution dated May 27, 2005 of the Court of Appeals (CA) and reinstating the Decision dated November 9, 2001 of the Office of the Ombudsman. The Decision of the Office of the Ombudsman found private respondents administratively guilty of dishonesty, grave misconduct and falsification of official documents.

Private respondents raise the following grounds —

I. With all due respect, the Honorable Court erred in its finding that the respondents in this case are administratively liable for dishonesty, grave misconduct and falsification of official document.

II. With all due respect, the Honorable Court erred in ruling that damage has been caused to the government by the actuations of the respondents as shown in the manner of handling their daily time records and that the existence of malice or criminal intent is not a prerequisite to declare the respondents administratively culpable.

III. With all due respect, the Honorable Court erred in ruling that the Office of the Ombudsman was correct in not dismissing the case outright.

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[1] *Rollo*, pp. 364-374.

IV. With all due respect, the Honorable Court erred in ruling that the doctrine laid down in *Aguinaldo vs. Santos* is not applicable to respondent Maricar.[2]

With respect to the first ground, private respondents insist that the nature of their positions required them to be on call 24 hours in a day, such that they would at times render more than eight hours of work for their father. They argue that they are not supposed to actually stay in the office as required of ordinary employees. Maricar even cites the fact that she has been regularly attending evening classes from Monday to Friday at the University of the East (UE) College of Law since 1999 when she first enrolled, since the said school does not offer any day classes for law students. She further claims that the Office of the Ombudsman could not have concluded that she falsified her Daily Time Records (DTRs) for the period 1995-1997 because it was not able to examine them during the investigation. Similarly, Marian posits that her DTRs for the period May 1996 to December 1997 were not examined by petitioner through Graft Investigation Officer I Moreno F. Generoso (GIO Generoso). Private respondents now ask: How could petitioner have validly concluded that their DTRs for those periods were falsified if they were not even seen and scrutinized by GIO Generoso?

As to the other grounds raised in the motion, private respondents merely reiterate the arguments they raised in their Comment[3] and their Memorandum[4] before this Court.

On the alleged absence of criminal intent or malice on the part of private respondents to falsify their respective DTRs during the subject periods of government employment, the argument that there was no damage caused the government by their acts, the error of the Office of the Ombudsman in not dismissing the complaint outright, and the supposed applicability of *Aguinaldo v. Santos*[5] to Maricar's case, this Court observes

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[2] *Id.* at 364-365.

[3] *Id.* at 169-180.

[4] *Id.* at 327-337.

[5] G.R. No. 94115, August 21, 1992, 212 SCRA 768, 773.

that these were the very same arguments that we already passed upon in our Decision[6] promulgated on January 29, 2008.

At this point, we reiterate, albeit briefly, our discussion on these matters.

The existence of malice or criminal intent is not a mandatory requirement for a finding of falsification of official documents as an administrative offense. What is required is simply a showing that private respondents made entries in their respective DTRs knowing fully well that they were false. The offense is in the nature of *malum prohibitum*, such that respondents' commission of the act with full knowledge of the falsity of the entries on the DTR is sufficient to hold them liable. The element of damage is also not absolutely necessary, since this case does not pertain to the felony of Falsification under the Revised Penal Code. Further, it remains arguable that there could have been damage caused the government, as public money was paid for hours of work not actually rendered.

On the issue of prescription, we reiterate that the Office of the Ombudsman, under R.A. No. 6770, has a wide range of discretion whether or not to proceed with an investigation of administrative offenses beyond the expiration of one (1) year from the commission of the offense.[7]

Likewise, it is a well-entrenched jurisprudential principle that the dismissal of the criminal case involving the same set of facts does not automatically result in the dismissal of the administrative charges against private respondents.[8]

Our ruling in *Aguinaldo* also cannot benefit Maricar because she was not a re-elected public official when she won as Councilor of Malabon City. Prior to her election, she held an appointive position — Legislative Staff Assistant — having been appointed thereto by her own father, former Councilor Edilberto Torres. It is very clear that in *Aguinaldo,* condonation of an administrative

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[6] *Rollo*, pp. 347-362.

[7] R.A. No. 6770, Sec. 20, paragraph 5.

[8] *Tecson v. Sandiganbayan*, 376 Phil. 191, 198-199 (1999).

offense applied only to an elective public official who was re-elected during the pendency of an administrative case against him.

However, we find the motion partly meritorious.

The Office of the Ombudsman made the factual finding that Maricar and Marian falsified their DTRs for the periods 1995 to 1997 and May 1996 to December 1997, respectively, even without the DTRs being presented, simply for the reason cited by GIO Generoso that the payrolls, which he examined during the investigation, pertaining to these periods, could not have been legally prepared without actually being supported by the corresponding DTRs pursuant to the auditing rules and regulations of the Commission on Audit (COA).[9]

While it is true that factual findings of administrative agencies that are affirmed by the CA are conclusive upon and generally not reviewable by this Court, the rule admits of the following exceptions, to wit: (1) **when the findings are grounded entirely on speculation, surmises, or conjectures;** (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the findings went beyond the issues of the case or are contrary to the admissions of the parties to the case; (7) when the findings are contrary to those of the trial court or the administrative agency; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the pleadings are not disputed; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) **when certain relevant facts not disputed by the parties were manifestly overlooked, which, if properly considered, would justify a different conclusion**.[10]

Given the particular circumstances surrounding this case, it cannot be justly and validly inferred that private respondents

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[9] *Rollo*, p. 227.

[10] *Rubio v. Munar, Jr.*, G.R. No. 155952, October 4, 2007, 534 SCRA 597, 602-603. (Emphasis supplied.)

indeed falsified their DTRs without the presentation of the corresponding DTRs themselves, since these DTRs were supposed to be the subject of the falsification. A party to an administrative case must prove his affirmative allegation with substantial evidence, and the complainant before the Office of the Ombudsman could not have established proof of the falsification absent the alleged falsified documents.[11]

Thus, Maricar, who was found administratively guilty of falsification of her DTRs for the period 1995-1997 even without the DTRs having been presented during the investigation, should be exonerated. With respect to Marian, she was found liable for falsifying her DTRs for the period 1996-2000, but offered in evidence at the investigation were only her DTRs for May 1998 to December 2000 (all indicating that she worked from 8:00 a.m. to 5:00 p.m.), which were available; and the Certificates of Matriculation subpoenaed from Centro Escolar University which evidently showed stark conflict with her class schedules. She should thus be held administratively culpable, but only with respect to the DTRs for the period May 1998 to December 2000. Accordingly, the administrative penalty should be correspondingly reduced from one (1) year suspension without pay to six (6) months suspension without pay. However, since Marian is no longer employed with the local government of Malabon City and the penalty of suspension cannot be imposed upon her, she should, instead, be penalized with a fine, following judicial precedents.[12] Under the premises, a fine in the amount of ₱5,000.00 would be sufficient.

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[11] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 590.

[12] *Re: Non-disclosure Before the Judicial and Bar Council of the Administrative Case Filed Against Judge Jaime V. Quitain, in his Capacity as the then Asst. Regional Director of the National Police Commission, Regional Office XI, Davao City*, JBC No. 013, August 22, 2007, 530 SCRA 729; *Galanza v. Judge Henry J. Trocino*, A.M. No. RTJ-07-2057, August 7, 2007, 529 SCRA 200; *Gallo v. Judge Cordero*, 315 Phil. 210, 220 (1995); *Zarate v. Judge Romanillos*, 312 Phil. 679 (1995); *Perez v. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302.

WHEREFORE, the Motion for Reconsideration is *PARTIALLY GRANTED* and the Decision dated January 29, 2008 is *MODIFIED*, such that Maricar Torres is exonerated from administrative liability while Marian Torres is instead imposed an administrative penalty of fine in the amount of ₱5,000.00.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario,[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 173375. September 25, 2008]

LEONCIO D. MANGAHAS, ZALDY G. MATIAS, ORLANDO O. OANES, DANTE Y. ARCILLA and JOCELYN R. DELA CRUZ, *petitioners, vs.* **THE COURT OF APPEALS, THE REGIONAL TRIAL COURT OF GAPAN CITY, BRANCH 35, THE PEOPLE OF THE PHILIPPINES and DR. CELIA MORALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW UNDER RULE 45; REASONS. — Factual issues are not the proper subject of this Court's discretionary power of judicial review under Rule 45 of the Revised Rules of Court. Under Rule 45, only questions of law may be raised in a petition for review on *certiorari* before this Court as we are not a trier of facts. Our jurisdiction in such a proceeding

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[*] In the Decision dated January 29, 2008, Associate Justice Renato C. Corona was designated as additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484, dated January 11, 2008.

is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the Court of Appeals are final and conclusive, and cannot be reviewed on appeal. It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below. The preceding rule however, admits of certain exceptions and has, in the past, been relaxed when the lower courts' findings were not supported by the evidence on record or were based on a misapprehension of facts, or when certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion.

2. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; THAT OFFICIAL DUTIES HAVE BEEN REGULARLY PERFORMED, NOT APPLICABLE. — To dispute the date of mailing as stamped on the envelope of their mail, petitioners presented the attestation, under oath, of the supposed Assistant Postmaster of the Cabanatuan City Post Office that the subject registered mail was "received in our office on 7 February 2006 for mailing x x x"; as well as that of the purported clerk of the same post office admitting to having mistakenly stamped the envelope of the subject registered mail with the date 8 February 2006. There is a presumption that official duties have been regularly performed. On this basis, we have ruled in previous cases that the Postmaster's certification is sufficient evidence of the fact of mailing. This presumption, however, is disputable. In this case, the Affidavit/Certification of the alleged Assistant Postmaster cannot give rise to such a presumption, for not only does it attest to an irregularity in the performance of official duties (*i.e.*, mistake in stamping the date on the registered mail), it is essentially hearsay evidence.

3. ID.; ID.; AFFIDAVIT; NOTARIZED AFFIDAVIT NOT GIVEN PROBATIVE VALUE. — Though notarized, we cannot give the affidavits of the Assistant Postmaster and the clerk any probative value, since they were both notarized by a lawyer belonging to the same law firm as petitioners' counsel and, as such, are self-serving assertions not corroborated by any other evidence. Considering the interest of his law firm in the case, we cannot rely solely on the *jurat* of the notary public that the affiants/certifiers are indeed who they say they are. The affiants/certifiers herein claimed to be officers or employees of the

Cabanatuan City Post Office, but this Court has no way of ensuring the veracity of such claim.

4. ID.; ID.; BEST EVIDENCE; ORIGINAL REGISTRY RECEIPT DEEMED BEST EVIDENCE OF THE FACT OF MAILING. — It would have been different had petitioners presented an Official Receipt as evidence of payment of appropriate fees corresponding to the issuance of such certifications by the Assistant Postmaster and the clerk, who certified that the photocopy of the pertinent page of the Registry Book was a faithful reproduction of the original and that she was the one who erroneously made the notation "8 February 2006" on the envelope addressed to the Clerk of Court of the Court of Appeals. Under PhilPost Administrative Order No. 05-17 dated 20 December 2005, in relation to Department of Transportation and Communications Memorandum Circular No. 2000-17 dated 18 February 2000, concerning fees for administrative services rendered, a fee of Php25.00 is imposed for certification of every document or information based on record. Without such receipt, plus the fact that the *jurats* of the affidavits/certifications were made by a lawyer from the same law firm as petitioners' counsel, we cannot help but doubt that the said documents were issued by the officers of the Cabanatuan City Post Office. In addition, petitioners could have easily presented the original Registry Receipt No. A-2094. It would have constituted the best evidence of the fact of mailing on 7 February 2006, even if a different date had been stamped on the envelope of the subject registered mail. Regrettably, petitioners have not seen fit to present such original. Their continued failure to present the original receipt can only lead one to remember the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary. Mere photocopy of Registry Receipt No. A-2094 militates against their position as there is no *indicium* of its authenticity. A mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.

5. ID.; CIVIL PROCEDURE; APPEALS; FAILURE TO FURNISH THE OSG A COPY OF THE PETITION WAS A FATAL

DEFECT; REASONS THEREFOR. — Failure to furnish the OSG a copy of the petition filed before the Court of Appeals was a fatal defect. We agree with the disposition of the Court of Appeals in that we have stated in *Salazar v. Romaquin* that Section 5, Rule 110 of the Revised Rules of Court provides: SEC. 5. *Who must prosecute criminal actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. The authority of the Provincial Prosecutor to appear for and represent the respondent People of the Philippines is confined only to the proceedings before the trial court. We further elucidated in the same case that: The pleadings of the accused and copies of the orders or resolutions of the trial court are served on the People of the Philippines through the Provincial Prosecutor. However, in appeals before the Court of Appeals and the Supreme Court either (a) by writ of error; (b) *via* petition for review; (c) on automatic appeal; or (d) in special civil actions where the People of the Philippines is a party, the general rule is that the Office of the Solicitor General is the sole representative of the People of the Philippines. This is provided for in Section 35(l) Chapter 12, Title III of Book IV of the 1987 Administrative Code, *viz*: (l) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. A copy of the petition in such action must be served on the People of the Philippines as mandated by Section 3, Rule 46 of the Rules of Court, through the Office of the Solicitor General. The service of a copy of the petition on the People of the Philippines, through the Provincial Prosecutor would be inefficacious. The petitioner's failure to have a copy of his petition served on the respondent, through the Office of the Solicitor General, shall be sufficient ground for the dismissal of the petition as provided in the last

paragraph of Section 3, Rule 46 of the Rules of Court. Unless and until copies of the petition are duly served on the respondent, the appellate court has no other recourse but to dismiss the petition. The purpose of the service of a copy of the petition on the respondent in an original action in the appellate court prior to the acquisition of jurisdiction over the person of the respondent is to apprise the latter of the filing of the petition and the averments contained therein and, thus, enable the respondent to file any appropriate pleading thereon even before the appellate court can act on the said petition, or to file his comment thereon if so ordered by the appellate court. But if a copy of the petition is served on the Provincial Prosecutor who is not authorized to represent the People of the Philippines in the appellate court, any pleading filed by the said Prosecutor for and in behalf of the People of the Philippines is unauthorized, and may be expunged from the records. In the more recent case of *Go v. Court of Appeals*, this Court, through Mr. Justice Quisumbing, once again made clear that "Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly states that in a petition filed originally in the Court of Appeals, the petitioner is required to serve a copy of the petition on the adverse party before its filing. If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13. Since the OSG represents the Republic of the Philippines once the case is brought before this Court or the Court of Appeals, then service of the petition should be made on that office."

6. ID.; ID.; DOCTRINE OF LIBERAL CONSTRUCTION OF THE RULES, NOT APPLICABLE. — It must always be remembered that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Aside from the above disquisition, there is no showing herein of any exceptional circumstance that may rationalize a digression from the rule on timely filing of appeals. Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other; or, as has often been "suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly

true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and procedural rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court." As we have put it long before: For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists- and is now still reverently observed- is `*aequetas nunquam contravenit legis*.' Having found the explanation of petitioners less than worthy of credence and lacking in evidentiary support, this Court is obliged to adhere austerely to the procedural rules on the timeliness of submission before the court.

APPEARANCES OF COUNSEL

Bauto Bauto and Flores Law Offices for petitioners.
Romeo Viloria for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in the instant Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court is (1) the *Resolution*[2] dated 23 February 2006 of the Court of Appeals in CA-G.R.

[1] *Rollo*, pp. 11-38.

[2] Penned by Court of Appeals Associate Justice Marina L. Buzon with Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok; Annex "TT" of the Petition; *id.* at 392-394.

SP No. 93272, entitled "*Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz v. The Regional Trial Court of Gapan City (Nueva Ecija), Branch 35, the People of the Philippines and Dr. Celia Morales*"; and (2) the *Resolution*[3] dated 13 June 2006 of the same court denying petitioners' Motion for Reconsideration of its earlier resolution. In both assailed resolutions, the Court of Appeals dismissed the Petition for *Certiorari,* with prayer for issuance of a temporary restraining order and injunction, filed by petitioners, for having been filed beyond the reglementary period within which to file said recourse.

The antecedent facts of the present petition are:

On 20 April 2001, private respondent Dr. Celia P. Morales (Morales) filed an Affidavit-Complaint[4] against petitioners Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz (Mangahas, *et al*.) for violation of Sec. 3 (f) of Republic Act No. 3019 before the Office of the Ombudsman. The complaint was docketed as OMB-1-01-0382-D.

In her complaint, private respondent Morales basically alleged that:

> 1. On June 27, 1998, the Sangguniang Bayan (SB for brevity) of the Municipality of Gapan, Nueva Ecija, thru the initiative of Councilor Zaldy G. Matias (nephew of Mr. and Mrs. Edgardo Manalastas), seconded by Councilor Carlos R. Malaca, persuaded to pass and enact Kapasyahan Blg. 39, taon 1998, granting the request of Mr. and Mrs. Edgardo Manalastas for the conversion of their agricultural land covered by Transfer Certificate of Title No. NT-125720 into a memorial garden despite insufficiency of the requirements thereof as provided by law x x x;
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> x x x x x x x x x

[3] Annex "VV" of the Petition; *id.* at 404-407.

[4] Annex "A" of the Petition; *id.* at 40- 44.

3. x x x after receiving a copy of the said Kapasyahan, it appeared that the conversion of the agricultural land of Mr. and Mrs. Edgardo Manalastas (Manalastas for brevity) into a memorial garden was hurriedly done and apparently not in accord with the necessary legal requirements based on their failure to: (a) notify the adjacent residential lot owners of the said plan and/or development; (b) secure proper recommendation(s) and permit from different government departments, bureaus and agencies concerned; and (c) follow and comply with the proper procedures as prescribed by law;

4. In questioning the same, my son sent a letter dated 13 April 1999 addressed to the SB and prayed, among others the immediate REVOCATION and CANCELLATION of the said Kapasyahan x x x;

5. x x x Secretary of the Sanggunian, x x x admitted therein that Kapasyahan Blg. 39, taon 1998 was only a DRAFT RESOLUTION x x x;

6. On 20 April 1999, another Kapasyahan Blg. 34, taon 1999 was issued by the SB refraining or stopping the Manalastas to further develop their project without first securing the proper permits and certification from the different government departments and bureaus concerned, unfortunately, however, the same was never implemented x x x;

7. On 14 May 1999, my son decided to send another letter addressed to the SB and prayed x x x the issuance of a permanent revocation of Kapasyahan Blg. 39, taon 1998 in lieu of a temporary revocation previously issued x x x;

8. x x x my daughter, Felicitas Morales sent another letter dated 28 September 2000 addressed to the SB, informing them of the presence of persons who had continued and still continue to develop the project of Manalastas despite the prohibition previously issued to that effect. However, to our prejudice, no action whatsoever was taken by the said public officials concerned, thereby extending undue favor to the Manalastas;

9. x x x the undersigned was forced to send another letter dated 24 January 2001 addressed to the SB x x x;

10. On 12 March 2001, another letter was sent by the undersigned addressed to the SB, requesting that I be given a chance to be heard in a form of public hearing in order to air my grievances against the illegal conversion of the land x x x and for the unfair, unjust and oppressive treatment which we suffered and continue to suffer up to the present x x x;

11. Four (4) days prior to the scheduled public hearing on 6 April 2001, the Office of the Sanggunian headed by Hon. Vice-Mayor Marcelino D.I. Alvarez sent a notice to all the members of the SB, namely, Leoncio D. Mangahas, Zaldy G. Matias, Danilo A. de Guzman, Carlos R. Malaca, Orlando Q. Oanes, Dante Y. Arcilla, Jocelyn dela Cruz, Crisanto V. Velayo II, Alfredo M. Alejandria, Jr. and Alejandro C. Velayo, for purpose(s) of informing them of the said public hearing;

12. When the notice was served to the following councilors, namely: Leoncio D. Mangahas, Zaldy G. Matias, Carlos R. Malaca, Orlando Q. Oanes, Dante Y. Arcilla and Jocelyn R. dela Cruz, I was informed by the Hon. Vice-Mayor Marcelino D.L. Alvarez and the Secretary of the Sanggunian, Mr. Eduardo H. Almera, that the said councilors have maliciously refused to sign the said notice, thereby giving undue advantage in favor of the Manalastas who up to this present time has been continuously developing their project despite the prohibition thereof x x x;

13. However, despite the fact that they were properly notified, the above-named councilors in the preceding paragraph have deliberately and maliciously neglected and/or refused to attend the scheduled public hearing last 6 April 2001, thereby unjustly and oppressively discriminating the undersigned without sufficient justification whatsoever;

14. Due to the unlawful acts committed by the six (6) councilors, the undersigned most respectfully submits that they be prosecuted for violation of Sec. 3(f) of the Anti-Graft and Corrupt Practice Act (R.A. 3019 as amended by R.A. 3047, P.D. 77 and B.P. 195) which provides that:

> *x x x Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on matter pending before him for purpose of obtaining, directly or indirectly, from*

> *any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party. x x x*
>
> 15. As of this date, no public hearing yet has ever been conducted, hence, to the prejudice of the undersigned;
>
> 16. With full sincerity and honesty, I believe that there will be no more public hearing that will be conducted due (to) the admission made by Hon. Vice-Mayor Marcelino D.L. Alvarez and Mr. Eduardo H. Almera as contained in their Joint Affidavit.

In their joint counter-affidavits, petitioners denied the accusations of private respondent Morales. They argued that the assailed *Kapasyahan Blg*. 39, *taon* 1998, was unanimously approved by the Municipal Councilors and was thereafter approved by the Provincial Councilors of Nueva Ecija.

In a *Resolution*[5] dated 27 June 2001, the Office of the Deputy Ombudsman for Luzon resolved to dismiss the complaint for lack of probable cause.

Upon motion of private respondent Morales, however, said Office, in another *Resolution*,[6] reconsidered its earlier finding of lack of probable cause. It held that there was further need for preliminary investigation to determine the criminal liabilities of petitioners in deliberately absenting themselves from the public hearing of the *Sangguniang Bayan* held on 6 April 2001.

On 8 November 2001, an *Order*[7] was issued by the Office of the Deputy Ombudsman for Luzon re-opening the case for further preliminary investigation.

In a *Resolution*[8] dated 5 June 2002, the Office of the Deputy Ombudsman for Luzon recommended that (1) petitioners be

[5] Annex "E" of the Petition; *id.* at 109-111.

[6] Dated 27 August 2001; Annex "H" of the Petition; *id.* at 135-136.

[7] Annex "I" of the Petition; *id.* at 137.

[8] Annex "M" of the Petition; *id.* at 158-162.

charged with and prosecuted for violation of Sec. 3 (f) of Republic Act No. 3019; and (2) the corresponding Information be filed in court.

On 18 July 2002, an *Information*[9] dated 5 June 2002, was filed before the Regional Trial Court (RTC), Branch 34, Gapan, Nueva Ecija, charging petitioners with the violation of Sec. 3(f) of Republic Act No. 3019. The accusatory portion thereof states:

> That on or about 11 April 2001 or sometime prior or subsequent thereto in Gapan, Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then the incumbent Councilors of the Municipality of Gapan, Nueva Ecija, committing the crime herein charged in relation to and in the performance of their official function, did then and there willfully, unlawfully and criminally neglect and refuse after due demand or request, without sufficient justification, to act within a reasonable time on a matter pending before them by absenting themselves in the public hearing of Kapasyahan Blg. 39, knowing fully well that their presence are indispensable, necessary to justify the development of the proposed memorial garden thereat, for the development of (sic) discriminating against one Celia Morales, the other interested party.

The case was docketed as Criminal Case No. 10926.

On 28 October 2002, petitioners filed with the RTC a *Motion for Reinvestigation with Prayer to Suspend Proceedings*[10] since the Information had already been filed with the said trial court.

In an *Order*[11] dated 26 March 2003, the RTC denied petitioners' motion for lack of merit.

Warrants[12] for the arrest of petitioners were subsequently issued by the RTC, but the former, without more ado, posted personal cash bail bonds to secure their provisional liberty.[13]

[9] Annex "N" of the Petition; *id.* at 163-164.

[10] Annex "T" of the Petition; *id.* at 193-199.

[11] Annex "Z" of the Petition; *id.* at 218-219.

[12] *Id.* at 220.

[13] *Id.* at 221-236 *vis-à-vis* Annex "AA" of the Petition; *id.* at 237.

In a last ditch effort to defer the proceedings before the RTC, petitioners filed a *Motion for Reconsideration of the Order dated March 26, 2003 with Prayer for Inhibition*.[14]

On 1 July 2003, Hon. Rodolfo Beltran, Presiding Judge of RTC- Branch 34, recused himself from the case without resolving the latest motion filed by petitioners.[15]

In an *Order*[16] dated 5 August 2003, Hon. Victoriano B. Cabanos, Presiding Judge of RTC-Branch 87, resolved the above motion by denying the same.

In the interim, before petitioners could be arraigned, the prosecution filed with the RTC a *Motion to Suspend Accused from Public Office*;[17] which petitioners countered by filing with the same court a *Motion to Quash with Urgent Prayer to Defer Arraignment and Issuance of Order of Suspension.*[18]

In an *Order*[19] dated 16 June 2005, the RTC granted the prosecution's prayer to suspend petitioners from public office for sixty (60) days in view of Sec. 63 (b) of the Local Government Code[20]; thus, effectively denying petitioners' *Motion to Quash with Urgent Prayer to Defer Arraignment and Issuance of Order of Suspension.* Petitioners filed a motion for reconsideration of

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[14] Annex "CC" of the Petition; *id.* at 238-246.

[15] Annex "DD" of the Petition; *id.* at 252-253.

[16] Annex "EE" of the Petition; *id.* at 255.

[17] Annex "GG" of the Petition; *id.* at 260-264.

[18] Annex "KK" of the Petition; *id.* at 287-294.

[19] Annex "OO" of the Petition; *id.* at 313-319.

[20] Sec. 63(b). — Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; *Provided*, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: *Provided, further,* That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

the order of suspension but it was also denied by the RTC in another Order[21] dated 25 November 2005, but this time issued by RTC Branch 35,[22] Gapan, Nueva Ecija.

Imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in (1) suspending them for sixty (60) days from public office; and (2) denying the motion to quash, as well as their prayer to defer their arraignment, petitioners filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court before the Court of Appeals.

On 23 February 2006, the Court of Appeals issued a *Resolution* dismissing the Petition. It ruled that:

> The petition alleges that petitioners received on December 9, 2005 a copy of the Order dated November 25, 2005, which denied their motion for reconsideration of the Order dated June 16, 2005. Consequently, the sixty (60) day period within which to file a petition for *certiorari* expired on February 7, 2006. However, the instant petition was filed only on February 8, 2006, as shown by the post office stamp on the envelope, and was, therefore, late by one (1) day. The assailed Orders had thus (sic) already attained finality.[23]

Petitioners moved for the reconsideration of the appellate court's dismissal of their petition. They claimed that, in actuality, their petition was mailed on 7 February 2006 and not on 8 February 2006. Attached to petitioner's motion for reconsideration was a certification by one Marita Pangandian, Assistant Postmaster of Cabanatuan City Post Office, Nueva Ecija, as well as a simple photocopy of the page of the registry receipt book of said post office showing that that subject mail matters addressed to the Court of Appeals were received for mailing on 7 February 2006.

The Court of Appeals, however, in a *Resolution* dated 13 June 2006 found no cogent reason to disturb its original conclusion

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[21] Annex "RR" of the Petition; *id.* at 381-388.

[22] The case was re-raffled a second time in view of the 13 October 2005 Order of Judge Cabanos inhibiting himself from further hearing the case in view of the motion for inhibition filed by petitioners.

[23] *Rollo*, p. 393.

that the petition was filed beyond the reglementary period within which to avail of the extraordinary writ of *certiorari*. The appellate court held that:

> Settled is the rule that a xerox copy of any document is without evidentiary weight or value (citation omitted). Moreover, the clerk of the post office who allegedly failed to stamp the date February 7, 2006 and, instead, stamped the date February 8, 2006 on the envelope containing the mail matter addressed to this Court did not execute an affidavit to that effect, so that the allegations in the affidavit of Mrs. Pangandian are hearsay.[24]

Further, the Court of Appeals took exception to the fact that the Office of the Solicitor General (OSG), being the official counsel of the People of the Philippines in appeals before the appellate court and the Supreme Court, was not served a copy of said petition. In its place, the Provincial Prosecutor was the one furnished a copy thereof.

Hence, petitioners come to this Court, challenging the dismissal by the Court of Appeals of their Petition anchored on the following arguments:

> A. WITH REGARD TO THE ACTUATIONS OF THE COURT OF APPEALS:
>
> 1. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* FOR ALLEGEDLY HAVING BEEN FILED ONE DAY LATE, CONSIDERING THAT:
>
> a. FIRST, THE REGISTRY RECEIPT BOOK OF THE CABANATUAN CITY POST OFFICE SHOWED AND THE ASSISTANT POSTMASTER STATED THAT THE MAIL MATTER ADDRESSED TO THE COURT OF APPEALS WAS MAILED BY THE PETITIONERS ON 7 FEBRUARY 2006 AND NOT ON 8 FEBRUARY 2006.
>
> b. SECOND, THE PETITIONERS ARE NOW SUBMITTING A CERTIFIED COPY OF THE REGISTRY RECEIPT BOOK AND AN AFFIDAVIT OF THE CLERK CONCERNED WHO STAMPED THE NOTATION THAT IT

[24] *Id.* at 405-406.

WAS MAILED ON 8 FEBRUARY 2006 AND INSTEAD OF 7 FEBRUARY 2006.

2. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION ON THE GROUND THAT NO COPY OF THE PETITION FOR *CERTIORARI* WAS FURNISHED TO THE OFFICE OF THE SOLICITOR GENERAL. PETITIONERS ARE NOW SUBMITTING A COPY OF THIS PETITION AND THE OTHER PLEADINGS ARE NOW BEING FURNISHED TO THE OFFICE OF THE SOLICITOR GENERAL.

B. WITH REGARD TO THE ACTUATIONS OF THE TRIAL COURT:

1. WITH DUE RESPECT, THE HONORABLE TRIAL COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT DENIED THE MOTION TO QUASH AND WHEN IT ORDERED THE SUSPENSION OF THE PETITIONERS CONSIDERING THAT:

a. FIRST, THE SUBJECT INFORMATION DATED 5 JUNE 2002 WAS AN INVALID INFORMATION, CONSIDERING THAT IT WAS NOT SIGNED BY THE GOVERNMENT PROSECUTOR CONCERNED ON THE DATE IT WAS FILED ON 18 JULY 2002;

b. SECOND, EVEN IF IT WAS BELATEDLY SIGNED, THE SAME INFORMATION REMAINED AS INVALID AND WAS NOT CURED BY THE FACT OF SIGNING AND COULD NOT BE GIVEN A RETROACTIVE EFFECT AS IF IT WERE VALID AT THE TIME IT WAS ORIGINALLY FILED;

c. THIRD, EVEN IF IT WAS RENDERED VALID BY THE FACT OF ITS BELATED SIGNING BY THE GOVERNMENT PROSECUTOR CONCERNED, THE SAID INFORMATION HAS INSUFFICIENT ALLEGATIONS IN IT AND SUCH, THE SAME SHOULD BE QUASHED;

d. FOURTH, THE TRIAL COURT HAS NO JURISDICTION TO TRY AND HEAR THIS CASE, MUCH MORE IMPOSE SUSPENSION AGAINST THE PETITIONERS.

> e. FIFTH, WITH DUE RESPECT, IT WOULD HAVE BEEN MORE PRUDENT IF THE TRIAL COURT HAD CONDUCTED A PRE-SUSPENSION HEARING IN ACCORDANCE WITH THE RULING OF THE SUPREME COURT IN THE CASE OF *SANTIAGO V. SANDIGANBAYAN, 356 SCRA 636.*
>
> f. SIXTH, WITH DUE RESPECT, THE HONORABLE COURT FAILED TO CONSIDER THAT THE ACCUSED ARE ALREADY SERVING DIFFERENT TERMS OF OFFICES AND THAT THE ALLEGED ACTS COMPLAINED OF WERE COMMITTED DURING THEIR PAST TERMS.[25]

Cutting through the issues, it would appear that ultimately, the central question and bone of contention in the petition before us boils down to the appreciation and determination of factual matters, first and foremost of which is the issue of whether the Petition for *Certiorari* filed with the Court of Appeals was indeed mailed on 7 February 2006. And only when the foregoing issue is resolved in the affirmative, is it still relevant for us to proceed to the legal question of whether the trial court erred in denying petitioners' motion to quash and granting the People's motion to suspend them from public office.

Factual issues are not the proper subject of this Court's discretionary power of judicial review under Rule 45 of the Revised Rules of Court. We have defined a question of law as distinguished from a question of fact, to wit:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence,

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[25] *Id.* at 23-25.

in which case, it is a question of law; otherwise it is a question of fact.[26]

Under Rule 45, only questions of law may be raised in a petition for review on *certiorari* before this Court as we are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the Court of Appeals are final and conclusive, and cannot be reviewed on appeal.[27] It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[28] The preceding rule however, admits of certain exceptions and has, in the past, been relaxed when the lower courts' findings were not supported by the evidence on record or were based on a misapprehension of facts,[29] or when certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion.[30]

Be that as it may, we are hard pressed to apply any of the exceptions to the case at bar.

Timeliness of an appeal is a factual issue. It requires a review or evaluation of evidence on when the present petition was actually mailed and received by the appellate court. In the case at bar, to prove that they mailed their Petition for *Certiorari* addressed to the Clerk of Court of the Court of Appeals on 7 February 2006 instead of 8 February 2006 as shown by the

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[26] *Velayo-Fong v. Spouses Velayo*, G.R. No. 155488, 6 December 2006, 510 SCRA 320, 329-330.

[27] *Donato C. Cruz Trading Corp. v. Court of Appeals*, 400 Phil. 776, 782 (2000); *Baylon v. Court of Appeals*, 371 Phil. 435, 441 (1999).

[28] *Kwok v. Philippine Carpet Manufacturing Corp.*, G.R. No. 149252, 28 April 2005, 457 SCRA 465, 475.

[29] *Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, 8 April 2005, 455 SCRA 175, 188.

[30] *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank*, 479 Phil. 483, 496 (2004).

stamped date on the envelope, petitioners initially submitted (1) a photocopy of the pertinent page of the Registry Book of the Cabanatuan Post Office sans any official guarantee that it was a faithful reproduction of the original; (2) an Affidavit of Service executed by one Lolita S. Rase stating under oath that she was the one who "served copies" of the Petition for *Certiorari*, by registered mail, to the parties of the subject case, including that intended for the Court of Appeals, with an attached photocopy of the registry receipt corresponding to the mail sent to the appellate court; and (3) an Affidavit of Merit/Certification made under oath by one Marita Pangandian, claiming to be the Assistant PostMaster of Cabanatuan City Post Office, which stated that said office received for mailing on 7 February 2006 four (4) parcels/mail matters addressed to (a) Atty. Romeo Viloria; (b) the Clerk of Court of RTC-Br. 87, Gapan, Nueva Ecija; (c) the Office of the Provincial Prosecutor; and (d) Court of Appeals Clerk of Court. To be precise, the supposed Assistant PostMaster attested in her affidavit that:

1. Based on our records, we received in our office on 7 February 2006 for mailing as registered mail four (4) parcels/ envelopes addressed to the following persons, namely:
   a) Atty. Romeo Viloria – 2092
   b) The Clerk of Court, Gapan – 2093
   c) The Office of the Provincial Prosecutor – 2094
   d) The Clerk of Court, Manila – A-2094 (for the Court of Appeals)
2. As a practice, mail matters are dispatched in the morning. If the mail matters are received in the afternoon, then they are dispatched on the next day. As such, of the said registered mail matters were received in the afternoon of 7 February 2006, then they were dispatched on the next day or on 8 February 2006;
3. Unknown to me, the registered mail matter for "The Clerk of Court" of Court of Appeals, Manila may not have been stamped when it was received on 7 February 2006 and/or may have been stamped with an erroneous date on 8 February 2006 when it was about to be dispatched.
4. When I examined the Registry Book, it appeared to be that there was some confusion on the part of our new clerk Lorena Datus, as the registered mail matter for the Office of the

Provincial Prosecutor was also entered as 2094 while the one intended for "The Clerk of Court, Manila" in the Registry Receipt Book was marked as "A-2094". With two (2) registered mail matters with Nos. 2094, it may possibly occur that the other parcel intended for the "Clerk of Court, Manila" was not stamped with the date "February 7, 2006" when it was received by our Post Office. The fact that it was not stamped may have gone unnoticed until that time that the said matters were about to be dispatched on "February 8, 2006" and possibly, one of our staff might have stamped the copy for the Court of Appeals with the date 8 February 2006.

5. This oversight on the erroneous stamping of the date was clearly unintentional and not deliberate on our part.
6. I am executing the foregoing for the purpose of attesting to the truth of the foregoing and upon the request of Atty. Christian B. Flores for the purpose of proving that the registered mail matter A-2094 was received by our Post Office on 7 February 2006.[31]

Both of the affidavits submitted by petitioners were notarized by Atty. Bener Ortiz Bauto of Bauto, Bauto and Flores Law Offices — evidently, the same law firm as that of the counsel of petitioners.

Based on the foregoing documents, nevertheless, the Court of Appeals stood pat in its dismissal of the petition. When petitioners came to this Court *via* the present petition for review on *certiorari*, they attached thereto the same photocopy of the pertinent page of the Registry Book of the Cabanatuan City Post Office, but this time with a typewritten notation "certified true copy" signed by one Lorena Gatus, purportedly a clerk of such post office. Likewise, petitioners annexed to their present petition, the additional affidavit of the same clerk Lorena Gatus attesting to the fact that she erroneously stamped on the envelopes of petitioners' mails the date 8 February 2006 instead of 7 February 2006.

Upon closer examination of the aforementioned documents, including those submitted before the appellate court, this Court finds no evidentiary basis to reverse the dismissal by the Court

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[31] *Rollo*, p. 293.

of Appeals of petitioner's petition for *certiorari* for being belatedly filed.

True, petitioners sent the Court of Appeals a registered mail containing seven (7) copies of their Petition for *Certiorari*. But the envelope in which the copies of the petition were contained bore the notation 8 February 2006 as the date of mailing. Such date fell beyond the reglementary period within which to file such a petition.

To dispute the date of mailing as stamped on the envelope of their mail, petitioners presented the attestation, under oath, of the supposed Assistant Postmaster of the Cabanatuan City Post Office that the subject registered mail was "received in our office on 7 February 2006 for mailing x x x"; as well as that of the purported clerk of the same post office admitting to having mistakenly stamped the envelope of the subject registered mail with the date 8 February 2006.

There is a presumption that official duties have been regularly performed.[32] On this basis, we have ruled in previous cases that the Postmaster's certification is sufficient evidence of the fact of mailing. This presumption, however, is disputable. In this case, the Affidavit/Certification of the alleged Assistant Postmaster cannot give rise to such a presumption, for not only does it attest to an irregularity in the performance of official duties (*i.e.*, mistake in stamping the date on the registered mail), it is essentially hearsay evidence.

Though notarized, we cannot give the affidavits of the Assistant Postmaster and the clerk any probative value, since they were both notarized by a lawyer belonging to the same law firm as petitioners' counsel and, as such, are self-serving assertions not corroborated by any other evidence. Considering the interest of his law firm in the case, we cannot rely solely on the *jurat* of the notary public that the affiants/certifiers are indeed who they say they are. The affiants/certifiers herein claimed to be officers or employees of the Cabanatuan City Post Office, but this Court has no way of ensuring the veracity of such claim.

[32] Sec. 3(m), Rule 131 of the Revised Rules of Court.

It would have been different had petitioners presented an Official Receipt as evidence of payment of appropriate fees corresponding to the issuance of such certifications by the Assistant Postmaster and the clerk, who certified that the photocopy of the pertinent page of the Registry Book was a faithful reproduction of the original and that she was the one who erroneously made the notation "8 February 2006" on the envelope addressed to the Clerk of Court of the Court of Appeals. Under PhilPost Administrative Order No. 05-17 dated 20 December 2005, in relation to Department of Transportation and Communications Memorandum Circular No. 2000-17 dated 18 February 2000, concerning fees for administrative services rendered, a fee of Php25.00 is imposed for certification of every document or information based on record. Without such receipt, plus the fact that the *jurats* of the affidavits/certifications were made by a lawyer from the same law firm as petitioners' counsel, we cannot help but doubt that the said documents were issued by the officers of the Cabanatuan City Post Office.

In addition, petitioners could have easily presented the original Registry Receipt No. A-2094. It would have constituted the best evidence of the fact of mailing on 7 February 2006, even if a different date had been stamped on the envelope of the subject registered mail. Regrettably, petitioners have not seen fit to present such original. Their continued failure to present the original receipt can only lead one to remember the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.[33] Mere photocopy of Registry Receipt No. A-2094 militates against their position as there is no *indicium* of its authenticity. A mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.

[33] *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, 10 April 2006, 487 SCRA 78, 106-107.

Given the foregoing, we find no reason to reverse the assailed resolutions of the Court of Appeals and disturb its conclusions therein. Petitioners miserably failed to adduce credible and sufficient substantiation that any inadvertence was committed by the Post Office of Cabanatuan City, Nueva Ecija. Instead of supporting their cause, the affidavits submitted by petitioners, taken together with the mere photocopy of Registry Receipt No. A-2094 without the presentation of the original thereof, actually lead this Court to doubt whether petitioners' counsel has been sincere in his dealings with the courts. Needless to stress, a lawyer is bound by ethical principles in the conduct of cases before the courts at all times.[34]

It has been said time and again that the perfection of an appeal within the period fixed by the rules is mandatory and jurisdictional.[35] But it is always in the power of this Court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it.[36] This Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits[37] and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.[38]

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[34] *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 742 (2002).

[35] *Philippine National Bank v. Court of Appeals*, 316 Phil. 371, 384 (1995).

[36] *Republic v. Court of Appeals*, 172 Phil. 741 (1978) involved a delay of six days; *Siguenza v. Court of Appeals*, G.R. No. L-44050, 16 July 1985, 137 SCRA 570, thirteen days; *Pacific Asia Overseas Shipping Corporation v. National Labor Relations Commission*, G.R. No. 76595, 6 May 1988, 161 SCRA 122, one day; *Cortes v. Court of Appeals*, G.R. No. 79010, 23 May 1988, 161 SCRA 444, seven days; *Olacao v. National Labor Relations Commission*, G.R. No. 81390, 29 August 1989, 177 SCRA 38, two days; *Legasto v. Court of Appeals*, G.R. Nos. 76854-60, 25 April 1989, 172 SCRA 722, two days; and *City Fair Corporation v. National Labor Relations Commission*, 313 Phil. 464 (1995), which also concerned a tardy appeal.

[37] *Aguam v. Court of Appeals*, 388 Phil. 587, 594 (2000).

[38] *Republic of the Philippines v. Imperial, Jr.*, 362 Phil. 466, 477 (1999).

Assuming that we suspend the rules, in the interest of justice, and direct the Court of Appeals to admit petitioners' Petition for *Certiorari* even if it was one day late, we would still affirm the dismissal of said Petition by the appellate court considering petitioners' failure to serve the OSG with a copy of the same.

In addressing the issue, petitioners exploit the oft used defense — in the interest of justice; and the fact that they have now furnished the OSG copies of the present petition, as well as other pleadings.

Failure to furnish the OSG a copy of the petition filed before the Court of Appeals was a fatal defect.

We agree with the disposition of the Court of Appeals in that we have stated in *Salazar v. Romaquin*[39] that Section 5, Rule 110 of the Revised Rules of Court provides:

> SEC. 5. *Who must prosecute criminal actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The authority of the Provincial Prosecutor to appear for and represent the respondent People of the Philippines is confined only to the proceedings before the trial court.

We further elucidated in the same case that:

> The pleadings of the accused and copies of the orders or resolutions of the trial court are served on the People of the Philippines through the Provincial Prosecutor. However, in appeals before the Court of Appeals and the Supreme Court either (a) by writ of error; (b) *via* petition for review; (c) on automatic appeal; or (d) in special civil actions where the People of the Philippines is a party, the general rule is that the Office of the Solicitor General is the sole representative of the People of the Philippines. This is

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[39] G.R. No. 151068, 21 May 2004, 429 SCRA 41, 47-48.

provided for in Section 35(l) Chapter 12, Title III of Book IV of the 1987 Administrative Code, *viz*:

> (l) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

A copy of the petition in such action must be served on the People of the Philippines as mandated by Section 3, Rule 46 of the Rules of Court, through the Office of the Solicitor General (citation omitted). The service of a copy of the petition on the People of the Philippines, through the Provincial Prosecutor would be inefficacious. The petitioner's failure to have a copy of his petition served on the respondent, through the Office of the Solicitor General, shall be sufficient ground for the dismissal of the petition as provided in the last paragraph of Section 3, Rule 46 of the Rules of Court. Unless and until copies of the petition are duly served on the respondent, the appellate court has no other recourse but to dismiss the petition.

The purpose of the service of a copy of the petition on the respondent in an original action in the appellate court prior to the acquisition of jurisdiction over the person of the respondent is to apprise the latter of the filing of the petition and the averments contained therein and, thus, enable the respondent to file any appropriate pleading thereon even before the appellate court can act on the said petition, or to file his comment thereon if so ordered by the appellate court. But if a copy of the petition is served on the Provincial Prosecutor who is not authorized to represent the People of the Philippines in the appellate court, any pleading filed by the said Prosecutor for and in behalf of the People of the Philippines is unauthorized, and may be expunged from the records.[40]

In the more recent case of *Go v. Court of Appeals*,[41] this Court, through Mr. Justice Quisumbing, once again made clear that "Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly states that in a petition filed originally in the Court of Appeals, the petitioner is required to serve a

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[40] *Id.* at 48-49.

[41] G.R. No. 163745, 24 August 2007, 531 SCRA 158, 165-166.

copy of the petition on the adverse party before its filing (citation omitted). If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13. Since the OSG represents the Republic of the Philippines once the case is brought before this Court of the Court of Appeals, then service of the petition should be made on that office (citation omitted)."

As a last ditch effort, petitioners hark on a liberal construction of the rules of procedure in order to bring about substantial justice and appeal to this Court's exercise of equity jurisdiction.

We are not convinced.

It must always be remembered that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Aside from the above disquisition, there is no showing herein of any exceptional circumstance that may rationalize a digression from the rule on timely filing of appeals.

Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other; or, as has often been "suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and procedural rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court."[42]

As we have put it long before:

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[42] *Tupas v. Court of Appeals*, G.R. No. 89571, 6 February 1991, 193 SCRA 597, 600, citing *Limpot v. Court of Appeals*, G.R. No. 44642, 20 February 1989, 170 SCRA 367, 369-370.

For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed — is '*aequetas nunquam contravenit legis*.'[43]

Having found the explanation of petitioners less than worthy of credence and lacking in evidentiary support, this Court is obliged to adhere austerely to the procedural rules on the timeliness of submission before the court.

All told, We find that the Court of Appeals did not err in dismissing the petition for (1) being filed beyond the reglementary period within which to file the same; and (2) failure to observe the requirement of service upon the OSG as counsel for the People of the Philippines.

In view of the foregoing, this Court sees no need to discuss the second assigned error.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The assailed 23 February 2006 *Resolution* and 13 June 2006 *Resolution*, both of the Court of Appeals in CA-G.R. SP No. 93272, are hereby *AFFIRMED*. Costs against petitioners Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz.

SO ORDERED.

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

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[43] *Aguila v. Court of First Instance of Batangas, Branch I,* G.R. No. L-48335, 15 April 1988, 160 SCRA 352, 359-360.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, former Solicitor General.

THIRD DIVISION

[G.R. No. 181632. September 25, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE BALLESTA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF THE ACCUSED, SUFFICIENTLY ESTABLISHED. — [T]he records revealed that during further investigation conducted by the NBI, **the wife of the deceased victim categorically and repeatedly stated that she saw the appellant at the crime scene right after she heard the gunshot. She maintained that the person who pulled her out of their pick-up truck was the appellant himself. This statement was corroborated by her daughter, who disclosed that the very person whom she saw scouring their displayed rice for sale was the same person who pulled her mother out of their vehicle and thereafter searched the compartment thereof**. It bears emphasis that the pictures of the appellant shown to the daughter of the victim show that the appellant posed with four to five other persons. Upon being shown the pictures, she directly and unhesitatingly pointed to the appellant as the person who scoured their displayed rice for sale, and as the one who pulled her mother out of the vehicle. These circumstances led to the amendment of the complaint for murder by dropping Raul Colongan as one of the suspects and including the name of the appellant in his stead. Also, during the testimony of the wife and the daughter of the victim before the trial court, they similarly identified positively the appellant as the person whom they actually saw at the crime scene immediately after the gunshot. As found by both lower courts, the testimonies of the wife and the daughter of the victim as regards the identity of the appellant were categorical, consistent and candid.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON DESERVE GREAT WEIGHT. — It is well-entrenched that the findings of the trial court on the credibility of witness deserve great weight, given the clear advantage of a trial judge in the appreciation

of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of their unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses. In this case, there was no cogent reason to deviate from the findings of both lower courts.

3. ID.; ID.; ID.; TESTIMONIES OF THE VICTIM'S WIFE AND DAUGHTER ARE CREDIBLE IN THE ABSENCE OF MOTIVE TO INCRIMINATE ACCUSED. — [T]here was no indication that the wife and the daughter of the deceased victim were improperly motivated when they testified against the appellant. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit. **Leonisa was the wife of the deceased victim while Mailene was his daughter; thus, it would be unnatural for them, being relatives and interested in vindicating the crime, to implicate someone other than the real culprit, lest the guilty go unpunished.** The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence, and blame one who is innocent of the crime. **In this case, Leonisa and Mailene's act of testifying against the appellant was motivated only by no other motive than their strong desire to seek justice for what had happened to the deceased victim.**

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; TWO CONDITIONS THEREOF TO BE APPRECIATED; APPLICATION. — It is settled that treachery cannot be presumed, but must be proved by clear and convincing evidence as conclusively as the killing itself. To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution were deliberately or consciously

adopted. **This Court has also previously held that where treachery is alleged, the manner of attack must be proven.** Where no particulars are shown as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, treachery cannot be appreciated as a qualifying circumstance. In the instant case, treachery cannot be appreciated, considering that the wife and the daughter of the victim did not see the initial stage and particulars of the attack on the victim. This Court has held that where all indicia tend to support the conclusion that the attack was sudden and unexpected, but there are no precise data on this point, treachery cannot be taken into account. Treachery cannot be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery. When the witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence.

5. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS THEREOF TO BE APPRECIATED; APPLICATION. — For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt. The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. In this case, the prosecution failed to show the presence of any of these elements. The record is bereft of any evidence to show evident premeditation. It was not shown that the appellant and his two other co-accused, who remain at large, meditated and reflected upon their decision to kill the victim. Likewise, there is a dearth of evidence that the appellant, as well as his two co-accused, persisted in their plan to kill the

victim. As this Court has repeatedly held, the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill. **In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.**

6. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ABSENCE THEREOF IN CASE AT BAR. — The qualifying circumstance of abuse of superior strength cannot also be appreciated. This aggravating circumstance is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked. In this case, however, the prosecution failed to prove that the appellant purposely used an excessive force in attacking the victim, considering that the prosecution witnesses did not actually see how the victim was shot.

7. REMEDIAL LAW; EVIDENCE; CONSPIRACY; WHEN NOT SUFFICIENTLY PROVEN, ACCUSED CAN BE HELD LIABLE ONLY AS AN ACCOMPLICE. — This Court agrees with the appellate court that the appellant can only be held liable as an accomplice. As the appellate court observed, there was lack of sufficient evidence of conspiracy between the appellant and the three visitors, such that doubt could not be removed as to whether the appellant was a principal in the killing of the victim. As found by the Court of Appeals, "a closely-[knit] connection existed between the events such that [appellant's] previous and simultaneous acts were not isolated from the [killing of the victim]. He positioned himself in front of the store, possibly to act as a lookout, but in any case ready to enter the truck to search and rob items inside. There could be no other conclusion that [appellant] knew of the criminal design of the perpetrators, and that he assented to, and cooperated in the accomplishment of the crime." However, the testimonies and evidence of the prosecution were not sufficient to prove with moral certainty appellant's participation as principal in the killing of the victim. There is also lack of sufficient evidence of conspiracy between the appellant and the three visitors. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused acted

in concert to achieve the same objective. In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the actual commission of the crime itself or moral assistance to co-conspirators by exerting moral ascendancy over them by moving them to execute or implement the conspiracy. Mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator. As testified to by the daughter of the victim, the appellant was not actually seen to have shot the victim, as he was only seen pulling her mother out of the vehicle immediately after the shooting incident. Lacking sufficient evidence of conspiracy and there being doubt as to whether appellant acted as a principal or just a mere accomplice, the **doubt should be resolved in his favor and is thus held liable only as an accomplice.** The failure of the prosecution to prove the existence of conspiracy does not eliminate any criminal liability on the part of the appellant. Although he cannot be convicted as a co-principal by reason of the conspiracy, he can still be liable as an accomplice. Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as accomplice will always be resolved in favor of the milder form of criminal liability — that of a mere accomplice. **Thus, it is only proper to hold the appellant guilty as an accomplice of the crime of homicide**.

8. ID.; ID.; ALIBI; ELEMENTS TO PROSPER AS A DEFENSE.— The appellant interposed the defense of alibi as a futile attempt to exonerate himself from the crime charged. Settled is the principle that alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable, but also because it can be easily fabricated. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. For alibi to succeed as a defense, the accused *must establish by clear and convincing evidence* (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.

9. ID.; ID.; ID.; PHYSICAL IMPOSSIBLITY TO BE AT THE SCENE OF THE CRIME, NOT ESTABLISHED. — In the

case at bar, **the appellant insists that at the time of the shooting incident, he was at the Lily Palomares store at the new market** drinking with a friend. The appellant failed to notice that the shooting incident also happened in the new market, the very same place where he was at the time of the shooting incident. Thus, it was not physically impossible for the appellant to be present at the scene of the crime. More so, such defense of alibi interposed by the appellant becomes weaker because it is uncorroborated. Despite the fact that he mentioned several people in his testimony, he never presented any of those people to testify on his behalf. **In view of our finding that the prosecution witnesses have no motive to falsely testify against the appellant, the defense of alibi, in this case uncorroborated by other witnesses, should be completely disregarded.**

10. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES IS MANDATORY IN CASES OF HOMICIDE. — Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is proper. Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is likewise in order.

11. ID.; ID.; ACTUAL AND EXEMPLARY DAMAGES; AWARD THEREOF, NOT PROPER. — As to actual damages, the heirs of the victim are not entitled thereto, because said damages were not duly proved with reasonable degree of certainty. Similarly, the heirs of the victim are not entitled to exemplary damages in the amount of ₱25,000.00, since the qualifying circumstance of treachery was not properly established.

12. ID.; ID.; TEMPERATE DAMAGES, AWARDED. — The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Thus, this Court

similarly awards ₱25,000.00 as temperate damages to the heirs of the deceased victim.

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.*:

This is an appeal from the Decision[1] dated 28 September 2007 of the Court of Appeals in CA-G.R. CR-HC No. 00121, which affirmed with modification the Decision,[2] dated 18 January 2000 of the Regional Trial Court (RTC), 10th Judicial Region, Branch 8, Malaybalay City, convicting the appellant Jessie Ballesta of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

A criminal Complaint[3] charging Raul Colongan, "John Doe" and "Peter Doe" with the crime of murder was filed before the Municipal Circuit Trial Court (MCTC), Don Carlos, Bukidnon, for preliminary investigation. Further investigation conducted by the National Bureau of Investigation (NBI), Cagayan de Oro City, resulted, however, in certain significant discoveries such that after preliminary investigation, the MCTC issued an Order[4] dropping Raul Colongan from the Complaint. Instead, it ordered the inclusion of the appellant as one of the accused therein.

Resultantly, appellant was charged with the crime of murder in an Information,[5] the accusatory portion of which reads:

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[1] Penned by Associate Justice Michael P. Elbinias with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring; *rollo*, pp. 4-16.

[2] Penned by Judge Vivencio P. Estrada, CA *rollo*, pp. 14-18.

[3] Records, p. 4.

[4] *Id.* at 27.

[5] CA *rollo*, p. 7.

That on or about the 19th day of April 1997, in the evening, particularly at New Market, Poblacion, [M]unicipality of Don Carlos, [P]rovince of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant] together with two other persons whose identities are not yet known, conspiring, confederating and mutually helping one another, with intent to kill by means of treachery, evidence (sic) premeditation and abuse of superior strength with the use of firearm with which they were conveniently provided, did then and there willfully, unlawfully and criminally attack, assault and shoot QUADRITO COSIÑERO, mortally wounding the latter which injury caused the death of QUADRITO COSIÑERO to the damage and prejudice of the legal heirs of (sic) QUADRITO COSIÑERO in such amount as may be allowed by law.[6]

When arraigned, appellant, with the assistance of counsel *de oficio*, pleaded NOT GUILTY to the crime charged. Accordingly, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Leonisa Cosiñero (Leonisa), wife of the deceased-victim; (2) Mailene Cosiñero (Mailene), daughter of the deceased-victim; and (3) Atty. Alex Cabornay (Atty. Cabornay), a Senior Investigation Agent of the NBI, Cagayan de Oro City.

Leonisa testified that at about 6:30 in the evening of 19 April 1997, her husband, Quadrito Cosiñero, the deceased victim, was inside their family-owned store located at the New Public Market, Don Carlos, Bukidnon, transacting with a customer. As their store usually closed at 6:30 in the evening, she, their children and sales personnel were already outside the store waiting for her husband to signal their departure. A few minutes thereafter, her husband went out of their store and said "Let us go." He then proceeded towards the driver's seat of their pick-up truck which was parked just outside their store. Leonisa also walked towards the front passenger seat of their pick-up truck. However, before she could even reach the front passenger seat of the said vehicle, she heard a gunshot coming from the other side of their vehicle. Out of fear, she immediately opened the door of the pick up, sat on the front passenger seat and turned to the

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[6] *Id.*

driver's seat to look for her husband, but she did not find him there. Hastily, the appellant pulled her out of the vehicle causing her to stagger and fall. She stood up and ran towards the pharmacy where her children were. The appellant then sat in the front passenger seat of the deceased-victim's pick-up truck and searched the compartment of the same. Failing to find anything, the appellant ran away from the scene.[7]

Shortly thereafter, Leonisa saw her blooded husband on the ground, and she shouted for help. Her husband was boarded into a tricycle and brought to Simbolan Hospital, Don Carlos, Bukidnon, where he died.[8] The cause of her husband's death was cardio-respiratory arrest secondary to intracranial hemorrhage due to gunshot wound sustained at the *occiput, right* to "supraorbital bone" within the "area of the left eye, nasal side."[9]

Mailene corroborated the testimony of her mother in all aspects, particularly as regards the identity of the appellant. She stated that at about 6:30 in the evening of 19 April 1997, while she was playing with her siblings in front of their store which was adjacent to a pharmacy, she saw the appellant scouring their displayed rice for sale. She disclosed that it was also the appellant who pulled her mother out of their pick-up truck. She then saw the appellant sit in the front passenger seat. Afterwards, the appellant searched the compartment of their vehicle. Thereafter, she did not see where the appellant went.[10]

Atty. Cabornay stated that it was the police officers of Don Carlos, Bukidnon, who made the initial investigation regarding the killing of Quadrito Cosiñero. The initial investigation disclosed that it was a certain Raul Colongan who shot the victim. When the case was forwarded to their office, Raul Colongan was already in their custody, so they immediately forwarded the records to

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[7] TSN, 23 November 1998, pp. 6-17.

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

[9] As evidenced by a *Post Mortem* Examination Report, dated 20 April 1997; Records, p. 5.

[10] TSN, 23 November 1998, pp. 67-79.

the MCTC for preliminary investigation. In the course of a follow-up investigation, it turned out that it was the appellant and not Raul Colongan who was positively identified by the wife and the daughter of the deceased victim as the person present at the crime scene. Considering that the case was already forwarded to the MCTC for preliminary investigation, Atty. Cabornay then moved for the incorporation of the name of the appellant as one of the suspects in the killing of Quadrito Cosiñero. The MCTC acted on his motion and ordered the filing of an amended complaint so as to include the name of the appellant as one of the suspects therein and the dropping of the name of Raul Colongan, as there was no iota of evidence that could be used as basis to implicate him as among the perpetrators in the killing of the victim.[11] In compliance therewith, he filed an amended complaint incorporating the name of the appellant as one of the suspects therein and thereby removed the name of Raul Colongan.[12]

For its part, the defense presented the lone testimony of the appellant who **interposed the defense of alibi.**

The appellant claimed that at about 6:30 in the evening of 18 April 1997, he was at his house in Pinamaloy, Don Carlos, Bukidnon. Thereafter, his wife called his attention because there were three persons, whom he later identified as Edon, *Alias* Abu and *Alias* Makung, all from Maguindanao, looking for Joel Bacalso (Joel), his *kumpare*. He then accompanied the three to Joel's house. After dinner, he and Joel accompanied the three visitors to the house of his aunt, where the three visitors slept for the night.[13]

The next day, or on 19 April 1997, immediately after he woke up, he went to the house of his aunt and found Joel talking to the three visitors. **One of the visitors told him that they were going to kidnap a person named Joe Caring from Don Carlos, Bukidnon, and that he and Joel would only**

[11] As evidenced by an Order dated 9 July 1997; Records, p. 27.

[12] TSN, 24 February 1999, pp. 3-14.

[13] TSN, 28 June 1999, pp. 6-10.

need to point to them Joe Caring and the two of them would be given one million pesos. They immediately proceeded to Joe Caring's house at Don Carlos, Bukidnon. Upon arrival thereat, appellant inquired as to the whereabouts of Joe Caring, but he was told that Joe Caring went to Cagayan de Oro City.[14] After learning that their intended victim was out of town, the three visitors planned to kidnap "just anyone else," considering that they had already used all their supplies in going to Don Carlos, Bukidnon.[15] The appellant then told Joel that he would go ahead to the New Market, Don Carlos, Bukidnon, where he worked as a dispatcher of Speed Zone buses. He stayed there until 5:00 p.m. Thereafter, he went to the place of a certain Paalam to eat. Then, he proceeded to the billiard hall near the place of Paalam. Upon his arrival at the billiard hall, he was called by a police officer and was asked to slaughter the latter's pig. Later, he went to the new market site to pay his debt. While on his way there, Eddie Acop and Tatay Polgo invited him for a drink. After a few minutes, he left and looked for a ride going to the new market. Again, he was called by a friend for a drink at the Lily Palomares store. It was already about 6:45 p.m. or 7:00 p.m. at that time. While drinking thereat, he heard a commotion outside the store. After a short while, he learned that Quadrito Cosiñero was robbed and shot.[16]

On his way home, Joel informed him that the three visitors from Maguindanao were the persons who shot Quadrito Cosiñero. **Joel likewise requested that he and the three visitors be accompanied by the appellant to the highway to wait for a bus as the three visitors were already leaving to which appellant acceded**.[17]

The appellant similarly alleged that from 6 October 1997 until 16 November 1997, he stayed in Bohol because his maternal grandmother died. When he returned home, he was arrested by

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[14] *Id.* at 11-14.

[15] *Id.* at 24-25.

[16] *Id.* at 14-21.

[17] *Id.* at 22-25.

the NBI at the port of Cagayan de Oro City for the death of the victim.[18]

On 18 January 2000, the trial court rendered its Decision finding the appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which is quoted as follows:

> WHEREFORE, judgment is entered finding [appellant] Jessie Ballesta GUILTY of the crime of murder as charged. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of his victim Quadrito Cosiñero the sum of ₱50,000.00 and moral damages of ₱30,000.00.[19]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[20] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, appellant raises the following errors, *viz*:

I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE POSITIVE IDENTIFICATION OF THE [APPELLANT] BY THE PROSECUTION WITNESSES WAS A PRODUCT OF AN AFTERTHOUGHT.

II. THE TRIAL COURT ERRED IN REJECTING [APPELLANT'S] DEFENSE OF ALIBI.

III. ASSUMING *ARGUENDO*, THAT THE APPELLANT CONSPIRED WITH THE KILLER OF THE VICTIM, THE TRIAL COURT ERRED IN CONVICTING THE [APPELLANT] OF MURDER DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[21]

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

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

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

[21] CA *rollo*, pp. 54-55.

On 28 September 2007, the Court of Appeals rendered its Decision affirming with modification the Decision of the trial court, the decretal portion of which reads:

> WHEREFORE, the appeal is **DENIED**. The Decision of the RTC is hereby **AFFIRMED**, but with the **MODIFICATION** that [appellant] Jessie Ballesta is liable only as an ACCOMPLICE, and not as a principal, to the crime of Murder. His sentence is therefore **REDUCED** to 12 years of *prision mayor* as minimum, to 17 years and 4 months of *reclusion temporal* as maximum. Moreover, while the award of ₱50,000.00 as indemnity for the death of the victim is also affirmed, the award of moral damages is hereby increased to ₱50,000.00.[22]

The appellant is before this Court seeking a reversal of his conviction.

The appellant contends that the failure of Leonisa, the wife of the deceased victim, to mention his name as the person who pulled her from the inside of the pick-up truck when she was investigated by the police, as well as during preliminary investigation, makes her testimony before the court *a quo* doubtful. In the same way, Mailene, the daughter of the victim, had not properly and positively identified him during the investigation as he was only identified by Mailene through the pictures furnished by the NBI, which pictures were taken from his house. Thus, he should be acquitted of the crime charged as his positive identification by the prosecution witnesses was a product of an afterthought.

Appellant further argues that the trial court erred in rejecting his defense of alibi because it was clearly established that during the killing of the deceased victim, he was somewhere else.

Finally, appellant claims that *assuming arguendo* that he conspired in the killing of the deceased victim, treachery should not be appreciated as a qualifying circumstance to change the crime committed to murder. He alleges that there was no direct proof that treachery was employed to insure the execution of

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[22] *Rollo*, p. 16.

the crime, as none of the prosecution witnesses saw how the deceased victim was shot.

Originally, the appellant was not considered as a suspect because the result of the initial investigation conducted by the police officers of Don Carlos, Bukidnon, pointed to a certain Raul Colongan as the person who shot the victim. It appears, however, that the wife of the victim mentioned the name of Raul Colongan in her affidavit only because of the information given to her by the police officers that somebody saw Raul Colongan shoot her husband. She was sure, though, that she did not see him at the crime scene.

Upon the other hand, the records revealed that during further investigation conducted by the NBI, **the wife of the deceased victim categorically and repeatedly stated that she saw the appellant at the crime scene right after she heard the gunshot**. **She maintained that the person who pulled her out of their pick-up truck was the appellant himself**. **This statement was corroborated by her daughter, who disclosed that the very person whom she saw scouring their displayed rice for sale was the same person who pulled her mother out of their vehicle and thereafter searched the compartment thereof**.

It bears emphasis that the pictures of the appellant shown to the daughter of the victim show that the appellant posed with four to five other persons. Upon being shown the pictures, she directly and unhesitatingly pointed to the appellant as the person who scoured their displayed rice for sale, and as the one who pulled her mother out of the vehicle. These circumstances led to the amendment of the complaint for murder by dropping Raul Colongan as one of the suspects and including the name of the appellant in his stead.

Also, during the testimony of the wife and the daughter of the victim before the trial court, they similarly identified positively the appellant as the person whom they actually saw at the crime scene immediately after the gunshot. As found by both lower courts, the testimonies of the wife and the daughter of the victim as regards the identity of the appellant were categorical, consistent and candid. Thus, this Court cannot cast any doubt on the

credibility of the said witnesses. Here we quote the testimonies of the wife and the daughter of the victim:

Direct testimony of the victim's wife:

Q: And were you able to reach the seat at the front seat?
A: Before I reached, there was a gun burst.

Q: And what did you do when you heard the shot?
A: I opened the door of the pick-up and sat down.

Q: And what happened next?
A: When I sat down, I looked at where my husband was supposed to be, but I did not find him.

Q: And after that, what happened next?
A: After turning to look for my husband, there was a person who pulled me strongly which caused me to stagger and fell down.

Q: And when you fell, what happened?
A: I immediately stood up and stood beside the post near our store and then ran towards the pharmacy near our store.

Q: You said you were pulled by a man which caused you to stagger and fell and you said you were able to hold a post near the store, do you know who this person who pulled you?
A: Yes.

Q: Will you please look and at present you said you know, if he is around could you identify him?
Q: By pointing your finger to anybody here, please tell who that person who pulled you out of the vehicle?
A: (Witness is pointing to a person inside the courtroom who identifies himself as Dioscoro Ballesta).[23]

Q: Do you know his name?
A: Yes.

Q: Who (sic) is his name?
A: I know him to be Jessie Ballesta.[24]

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[23] In the appellant's direct testimony he stated that his name is Dioscoro Ballesta. He also stated that he is the same Jessie Ballesta, the accused in the present case (TSN, 28 June 1999, p. 3).

[24] TSN, 23 November 1998, pp. 14-16.

Direct testimony of the victim's daughter:

Q: Now, at 6:30 o'clock in the evening, you said that was the usual time that your business closes, where was your mother located at that precise time, 6:30 in the evening?
A: Outside our store.

x x x x x x x x x

Q: How about your father, where was he?
A: He was inside the store.

x x x x x x x x x

Q: Now, at a particular time before your store close few minutes before your store, can you recall if there was somebody who was standing near the place where you were selling your rice?
A: Yes.

Q: What was he doing, if you know?
A: He was scouring the displayed rice for sale.

Q: Can you still recall his face even until this moment?
A: Yes.

x x x x x x x x x

Q: You said awhile ago that you identified that person scouring rice at the place where the rice situated on that particular date, [19 April 1997], at 6:30 o'clock in the evening, if that fellow is around within the four corners of this sala of the Honorable Court, will you please point to him?
A: (Witness is pointing to a person inside the courtroom who has already identified himself as Dioscoro Ballesta).[25]

Based on the foregoing, it cannot be said that the positive identification of the appellant was a product of an afterthought.

It is well-entrenched that the findings of the trial court on the credibility of witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies

[25] *Id.* at 66-68.

because of their unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[26] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[27] Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[28] In this case, there was no cogent reason to deviate from the findings of both lower courts.

Moreover, there was no indication that the wife and the daughter of the deceased victim were improperly motivated when they testified against the appellant. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[29] **Leonisa was the wife of the deceased victim while Mailene was his daughter; thus, it would be unnatural for them, being relatives and interested in vindicating the crime, to implicate someone other than the real culprit, lest the guilty go unpunished.** The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence, and blame one who is innocent of the crime.[30] **In this case, Leonisa and Mailene's act of testifying against the appellant was motivated only by no other motive than their strong desire to seek justice for what had happened to the deceased victim**.

To at least downgrade the crime charged against him, the appellant argues that the qualifying circumstance of treachery was not sufficiently proven by the prosecution.

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[26] *People v. Benito*, 363 Phil. 90, 97-98 (1999).

[27] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[28] *People v. Benito*, *supra* note 26 at 98.

[29] *People v. Rendoque*, 379 Phil. 671, 685 (2000).

[30] *People v. Dulanas*, G.R. No. 159058, 3 May 2006, 489 SCRA 58, 76-77.

It is settled that treachery cannot be presumed, but must be proved by clear and convincing evidence as conclusively as the killing itself. To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution were deliberately or consciously adopted. **This Court has also previously held that where treachery is alleged, the manner of attack must be proven.** Where no particulars are shown as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, treachery cannot be appreciated as a qualifying circumstance.[31]

In the instant case, treachery cannot be appreciated, considering that the wife and the daughter of the victim did not see the initial stage and particulars of the attack on the victim. This Court has held that where all indicia tend to support the conclusion that the attack was sudden and unexpected, but there are no precise data on this point, treachery cannot be taken into account. Treachery cannot be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery. When the witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence.[32]

The Information also alleged that evident premeditation and abuse of superior strength attended the killing.

For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse

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[31] *People v. Samudio*, 406 Phil. 318, 329 (2001).

[32] *People v. Santiago*, 396 Phil. 200, 207 (2000), citing *People v. Silva*, 378 Phil. 1267, 1275 (1999) and *People v. Lopez*, 371 Phil. 852, 864 (1999).

of time between decision and execution to allow the accused to reflect upon the consequences of his act.[33] Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt.[34] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[35]

In this case, the prosecution failed to show the presence of any of these elements. The record is bereft of any evidence to show evident premeditation. It was not shown that the appellant and his two other co-accused, who remain at large, meditated and reflected upon their decision to kill the victim. Likewise, there is a dearth of evidence that the appellant, as well as his two co-accused, persisted in their plan to kill the victim. As this Court has repeatedly held, the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill.[36] **In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient**.[37]

The qualifying circumstance of abuse of superior strength cannot also be appreciated. This aggravating circumstance is present when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[38] In this case, however, the prosecution failed to prove that the appellant purposely used an excessive force in attacking

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[33] *People v. PO3 Tan*, 411 Phil. 813, 836-837 (2001).

[34] *People v. Manes*, 362 Phil. 569, 579 (1999).

[35] *People v. Rivera*, 458 Phil. 856, 879 (2003).

[36] *People v. Tan*, 373 Phil. 190, 200 (1999); *People v. Mahinay*, 364 Phil. 423, 436 (1999); *People v. Chua*, 357 Phil. 907, 921 (1998).

[37] *People v. Tan, id.*

[38] *People v. Garcia*, 435 Phil. 283, 295 (2002).

the victim, considering that the prosecution witnesses did not actually see how the victim was shot.

Absent the qualifying circumstances of treachery, evident premeditation and abuse of superior strength, the appellant could only be liable for homicide.

We now proceed to determine the liability of the appellant.

This Court agrees with the appellate court that the appellant can only be held liable as an accomplice. As the appellate court observed, there was lack of sufficient evidence of conspiracy between the appellant and the three visitors, such that doubt could not be removed as to whether the appellant was a principal in the killing of the victim. As found by the Court of Appeals, "a closely-[knit] connection existed between the events such that [appellant's] previous and simultaneous acts were not isolated from the [killing of the victim]. He positioned himself in front of the store, possibly to act as a lookout, but in any case ready to enter the truck to search and rob items inside. There could be no other conclusion that [appellant] knew of the criminal design of the perpetrators, and that he assented to, and cooperated in the accomplishment of the crime."[39] However, the testimonies and evidence of the prosecution were not sufficient to prove with moral certainty appellant's participation as principal in the killing of the victim.

There is also lack of sufficient evidence of conspiracy between the appellant and the three visitors. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused acted in concert to achieve the same objective. In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the actual commission of the crime itself or moral assistance to co-conspirators by exerting moral ascendancy over them by moving them to execute or

[39] *Rollo*, p.14.

implement the conspiracy. Mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.[40] As testified to by the daughter of the victim, the appellant was not actually seen to have shot the victim, as he was only seen pulling her mother out of the vehicle immediately after the shooting incident. Lacking sufficient evidence of conspiracy and there being doubt as to whether appellant acted as a principal or just a mere accomplice, the **doubt should be resolved in his favor and is thus held liable only as an accomplice**.[41]

The failure of the prosecution to prove the existence of conspiracy does not eliminate any criminal liability on the part of the appellant. Although he cannot be convicted as a co-principal by reason of the conspiracy, he can still be liable as an accomplice. Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as accomplice will always be resolved in favor of the milder form of criminal liability - that of a mere accomplice.[42] **Thus, it is only proper to hold the appellant guilty as an accomplice of the crime of homicide**.

The appellant interposed the defense of alibi as a futile attempt to exonerate himself from the crime charged. Settled is the principle that alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable, but also because it can be easily fabricated.[43] Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[44] For alibi to succeed as a defense, the accused *must establish*

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[40] *People v. Santiago, supra,* note 32 at 210, citing *People v. Bautista,* 387 Phil. 183, 204-205 (2000), *People v. Ragundiaz,* 389 Phil. 532, 551 (2000) and *Salvatierra v. Court of Appeals,* 389 Phil. 66, 74 (2000).

[41] *People v. Santiago, supra* note 32 at 211-212.

[42] *People v. Samudio, supra* note 31 at 333.

[43] *People v. Monsayac,* 367 Phil. 55, 65 (1999).

[44] *People v. Reyes,* 447 Phil. 668, 677 (2003).

by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[45]

In the case at bar, **the appellant insists that at the time of the shooting incident, he was at the Lily Palomares store at the new market** drinking with a friend. The appellant failed to notice that the shooting incident also happened in the new market, the very same place where he was at the time of the shooting incident. Thus, it was not physically impossible for the appellant to be present at the scene of the crime. More so, such defense of alibi interposed by the appellant becomes weaker because it is uncorroborated. Despite the fact that he mentioned several people in his testimony, he never presented any of those people to testify on his behalf. **In view of our finding that the prosecution witnesses have no motive to falsely testify against the appellant, the defense of alibi, in this case uncorroborated by other witnesses, should be completely disregarded**.

All told, the appellant is guilty as an accomplice in the crime of homicide. Under Article 249 of the Revised Penal Code, as amended, the penalty imposed for the crime of homicide is *reclusion temporal*. Since appellant is only an accomplice, the imposable penalty is one degree lower than that imposable for the principal, *i.e.*, *prision mayor*. There being neither aggravating nor mitigating circumstances, the said penalty shall be imposed in its medium period.[46] Applying the Indeterminate Sentence Law, appellant is accordingly sentenced to suffer the prison term of 4 years, 2 months and 1 day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil

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[45] *People v. Ortizuela*, G.R. No. 135675, 23 June 2004, 432 SCRA 574, 584.

[46] ART. 64. *Rules for the application of penalties which contain three periods*. — x x x.

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[47]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[48] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence,[49] the award of ₱50,000.00 to the heirs of the victim as civil indemnity is proper.

As to actual damages, the heirs of the victim are not entitled thereto, because said damages were not duly proved with reasonable degree of certainty.[50] Similarly, the heirs of the victim are not entitled to exemplary damages in the amount of ₱25,000.00, since the qualifying circumstance of treachery was not properly established.[51]

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[52] The award of ₱50,000.00 as moral damages is likewise in order.

The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[53] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary

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[47] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

[48] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[49] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385; *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133.

[50] *People v. Tubongbanua, supra* note 48 at 742.

[51] *People v. Beltran, Jr., supra* note 47 at 741.

[52] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[53] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

loss although the exact amount was not proved.[54] Thus, this Court similarly awards ₱25,000.00 as temperate damages to the heirs of the deceased victim.

WHEREFORE, all the foregoing considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00121 is hereby *MODIFIED* as follows: (1) appellant Jessie Ballesta is hereby found *GUILTY* beyond reasonable doubt as an accomplice in the crime of homicide; (2) there being neither aggravating nor mitigating circumstances in the commission of the crime, the appellant is hereby sentenced to suffer the penalty of 4 years, 2 months and 1 day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum; (3) the appellant is likewise *ORDERED* to pay the heirs of Quadrito Cosiñero the amount of ₱25,000.00 as temperate damages. The amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, already awarded by the appellate court, are *MAINTAINED*.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-06-2233. September 26, 2008]
(Formerly A.M. OCA IPI No. 05-2268-P)

JUDGE HENRY B. BASILLA, *complainant, vs.* **YOLANDA L. RICAFORT, Legal Researcher, Regional Trial Court, Branch 3, Legazpi City,** *respondent.*

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[54] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; DISHONESTY; DELIBERATELY PUNCHING OUT BUNDY CARD OF ANOTHER PERSON CONSTITUTES DISHONESTY. — We concur with the findings of the investigating judge and the OCA that respondent is guilty of dishonesty for deliberately punching out the bundy card of her brother, Rolando Ricafort, in the afternoon of July 15, 2005. The defense advanced by respondent that she only accidentally punched Rolando's bundy card cannot stand against the evidence on record to the contrary. Her letter dated August 15, 2005 to the Court Administrator showed otherwise. She there stated that her uncertainty about finding Rolando caused her to punch the bundy card of the latter. It is clear that respondent punched out first her bundy card before punching out Rolando's bundy card. Also, the version of complainant's witnesses belie completely respondent's defense. There being no evidence tending to question the motive and integrity of said witnesses, their testimonies should be given full credit. Incidentally, in respondent's letter-explanation dated October 28, 2006, she admitted having earlier accidentally punched the bundy card of Rolando Ricafort on October 26, 2004 and promised not to repeat the same act in the future. Respondent, however, was not formally charged for that incident. According to **Philippine Law Dictionary,** by Federico B. Moreno, third edition, **dishonesty** means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith." Evidently, respondent committed the act complained of to cover up Rolando's absence in the office on that afternoon of July 15, 2004. There is no *iota* of doubt that complainant's act was not only intentional but also deceitful. Respondent miserably failed to keep up with the strictest standard of conduct required of court personnel who, upon assumption of duty, must live up to the tenets of honesty and integrity.

R E S O L U T I O N

REYES, R.T., *J.*:

THIS resolves the complaint of Presiding Judge Henry B. Basilla, Regional Trial Court (RTC), Branch 3, Legazpi City, against respondent Yolanda Ricafort, former legal researcher of said Court, for **dishonesty** or **serious misconduct** on the ground that she punched out the bundy card of her brother, Rolando Ricafort, Clerk III, same court.

Via a letter[1] dated August 1, 2005 to then Court Administrator, now Associate Justice Hon. Presbitero J. Velasco, Jr., complainant Judge Basilla lodged the complaint with the following attachments:

1) Complainant's Memorandum[2] to respondent dated July 27, 2005;

2) Letter-explanation[3] of respondent dated July 29, 2005;

3) Complainant's Memorandum[4] to respondent dated October 26, 2004;

4) Letter-explanation[5] of respondent dated October 28, 2004; and

5) Joint Affidavit[6] of Joyce Guerrero, Branch Clerk of Court, same court, and Cynthia S. Ajero, Court Stenographer, same court, against respondent.

On August 30, 2005, the Office of the Court Administrator (OCA) directed respondent to file her comment on the letter-complaint within ten (10) days from notice.

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[1] *Rollo,* p. 3.

[2] *Id.* at 4; Exhibit "B".

[3] *Id.* at 5; Exhibit "C".

[4] *Id.* at 6; Exhibit "D".

[5] *Id.* at 7; Exhibit "E".

[6] *Id.* at 8; Exhibit "F".

By letter dated September 23, 2005, respondent requested an extension of ten (10) days from September 26, 2005 or until October 6, 2005 to submit her comment. On October 19, 2005, respondent submitted her Comment dated September 27, 2005.

On April 18, 2006, the OCA submitted a Report to the Court with the following recommendations:

(1) that instant administrative matter be RE-DOCKETED as a regular administrative matter; and

(2) that respondent Ms. Yolanda Ricafort be SUSPENDED from the service for Six (6) months without benefits including leave credits for dishonesty with a WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.[7]

In its Resolution of August 14, 2006, this Court resolved to re-docket the administrative matter as a regular administrative case and to refer the same to the Executive Judge, RTC, Legazpi City, for investigation, report and recommendation.

During the pendency of the administrative case, respondent compulsorily retired from the service on February 14, 2007.

On March 5, 2007, Executive Judge Avelino V. Rodenas, Jr. of RTC, Legazpi City, inhibited himself from the case and ordered that the records be forwarded to this Court for designation of a new investigating judge. On March 22, 2007, Deputy Court Administrator Jose P. Perez referred the case to the new Executive Judge, Edgar L. Armes, RTC, Legazpi City, for investigation, report and recommendation.

Executive Judge Edgar L. Armes commenced the investigation on April 13, 2007. Complainant and respondent formally offered their exhibits on April 24, 2007 and May 8, 2007, respectively. The case was deemed submitted for resolution on May 8, 2007 by agreement of the parties.

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[7] *Id.* at 24.

On July 16, 2007, Investigating Judge Armes submitted his investigation report and recommendation.[8] On August 8, 2007, this Court referred said report to the OCA for evaluation, report and recommendation.

The OCA submitted, on October 08, 2007, its evaluation report and recommendation which reads:

> This is in compliance with the Resolution of the Third Division of the Court dated 08 August 2007 referring to the Office of the Court Administrator for evaluation, report and recommendation the investigation report dated 27 June 2007 of Executive Judge Edgar L. Armes, RTC, Legazpi City in the instant administrative case.
>
> This case originated from the complaint dated 01 August 2005 of Judge Henry B. Basilla, RTC, Branch 3, Legazpi City, charging Ms. Yolanda L. Ricafort, Legal Researcher, same court, with Dishonesty and Serious Misconduct.
>
> According to complainant, sometime in the afternoon of 15 July 2005, respondent punched out the bundy card of her brother, Rolando L. Ricafort, Clerk III, RTC, Branch 3, Legazpi City. Respondent allegedly committed the same offense on 26 October 2004 despite her earlier promise not to do so.
>
> In her Comment dated 15 August 2005, respondent narrated that after the flag retreat in the afternoon of 15 July 2005, she noticed that her brother had disappeared. She searched for her brother but the latter was nowhere to be found. Uncertain of the whereabouts of her brother, respondent punched out the bundy card of the former. Thereafter she learned that her brother received an urgent call from her niece who had an asthma attack and had to be rushed home to be nebulized.
>
> In view of the gravity of the offense charged, the Court, in a Resolution dated 14 August 2006, resolved to:
>
> a.) RE-DOCKET the instant case as a regular administrative matter;
> b.) REFER this case to the Executive Judge, RTC, Legazpi City for investigation, report and recommendation;

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[8] Office of the Executive Judge of RTC, 5th Judicial Region, Branch 4, Legazpi City, "Report and Recommendation."

In his investigation report dated 27 June 2007, Executive Judge Edgar L. Armes, RTC, Legazpi City made the following findings of fact:

1. In her Affidavit dated 24 April 2007, respondent alleged that prior to the incident, the wife of Rolando Ricafort called her up, asking whether Rolando had already left the office since respondent's niece was suffering from severe asthma. After responding that Rolando was no longer in the office, respondent went to the rack where their time cards were placed to get her card. She accordingly got a card thinking that it was hers and punched it out. Immediately thereafter, she rushed to the residence of Rolando to see if she could be of help to her niece;

2. The aforesaid version is diametrically opposed to respondent's version in her letter-explanation dated 29 July 2005 (Exh. "C"). In the latter version, respondent alleged that she took the card of Rolando from the rack inside Branch 3 in order to place the same in the official rack outside the said Branch near the bundy clock. However, she forgot this and punched out the bundy card of Rolando that afternoon. Ironically, she claimed in the same breath that she could not remember punching out that afternoon, although if she did so, it was not intentional. Her card and that of Rolando were adjacent so that sometimes, her card is above his and vise versa. Being already old, she has become neglectful and forgetful;

3. It may be noted that in her earlier version, made fourteen (14) days after the incident in question, respondent never mentioned what she mentioned in her affidavit (Exhibit "1") executed one (1) year and nine (9) months after the incident in question, about the alleged asthma attack of her niece which caused her to rush immediately to the residence of Rolando after punching out two (2) bundy cards;

4. Moreover, in her first version (Exh. "C"), respondent took the bundy card of Rolando from the rack inside Branch 3, while in her second version (Exh. "1"), she took the bundy card from the rack outside the Branch. The second version tallies with the version of complainant's witnesses,

Pros. Guerrero and Cynthia Ajero that the bundy card of Rolando was taken by respondent from the rack outside of Branch 3, at the lobby of the RTC Building;

5. There is a difference between the second version and the version of complainant's witnesses with respect to which card was first used by respondent. While respondent alleged that what she took first was the bundy card of Rolando, followed by her bundy card, complainant's witnesses alleged that respondent first punched out her bundy card, placed it on the rack, then got another card from the rack, punched it out and returned it on the rack. They discovered that the second bundy card belonged to Rolando. The version of complainant's witnesses, who were not shown to be biased, belies respondent's allegation that she made a mistake in punching out her bundy card. If respondent was really mistaken in punching out the bundy card of her brother, she would immediately make the necessary correction right there and then by canceling the said erroneous entry and by immediately informing her superior, then Clerk of Court, now Pros. Guerrero whom she admitted was in the vicinity at the time of the incident in question. The fact that she did not goes to show that had there been no protest on her punching out Rolando's bundy card, she would have left it as it was, making it appear that Rolando was present up to the end of office hours. Hence, the intention to cheat is glaring;

6. Clearly, respondent's defense that her punching out Rolando's bundy card was accidental cannot be given credence. She had a motive to intentionally punch out the subject bundy card because the user thereof is her brother, who she always helped in Branch 3 (TSN, E. Ordoño, May 8, 2007, p. 21). The alleged antagonistic attitude of complainant against respondent in their official dealings does not belie the allegations in the Complaint especially so because the same were duly proven by eyewitnesses and by respondent herself, who admitted having done the act of punching out her brother's bundy card.

In view of the foregoing, Executive Judge Armes concluded that respondent intentionally punched out the bundy card of her brother Rolando at the date and time of the incident in question. The said

act violates Supreme Court Memorandum Order No. 49-2003, dated 01 December 2003, enjoining the use of bundy clock in all Courts. Since respondent made it appear that Rolando was present up to the end of office hours on 15 July 2005, when the same is false, she committed an act of dishonesty.

In the case of *Aquino vs. The General Manager of GSIS*, 133 Phil. 492, as reiterated in the case of *Sevilla vs. Gocon*, 423 SCRA 98, it was held that dishonesty is the act of intentionally making a false statement in any material facts, or practicing or attempting to practice any deception or fraud.

Based on the foregoing, Judge Armes found respondent legal researcher guilty of Dishonesty, which, pursuant to Section 52(A)(1) of the Revised Uniform Rules in Administrative Cases of the Civil Service, is a grave offense punishable by dismissal from the service for the first offense. Considering, however, that respondent has been in the government service for forty (40) years, thirty-five (35) years of which were dedicated to the Judiciary and this administrative charge came on the eleventh hour prior to her retirement, she is entitled to the mitigating circumstance of length of service in the government pursuant to Sec. 53(j) of the same Rules. The penalty next lower to dismissal from the service is suspension for six (6) months and one (1) day to one (1) year.

Judge Armes accordingly recommended that respondent Yolanda Ricafort be suspended from the service for six (6) months and one (1) day.

We completely agree with the foregoing findings and conclusions of the investigating judge.

Indeed, the act complained of was clearly proven, not only by the testimony of complainant's witnesses, but more importantly, by the admission of respondent herself.

Considering, however, that respondent compulsorily retired from the service effective 14 February 2007, the penalty of suspension can no longer be imposed. In lieu thereof, the penalty of fine should be imposed. Since respondent was found guilty of a serious offense, a fine of Thirty Thousand Pesos (₱30,000.00) is appropriate.

PREMISES CONSIDERED, the undersigned most respectfully recommends the following for the consideration of the Honorable Court:

1. Respondent Yolanda L. Ricafort be **FOUND GUILTY** of dishonesty and be accordingly **FINED** in the amount of Thirty Thousand Pesos (₱30,000.00), the same to be deducted from whatever retirement benefits may be due her; and

2. the Fiscal Management Office, Office of the Court Administrator be **DIRECTED** to release the retirement benefits of Ms. Ricafort **AFTER** deduction of the ₱30,000.00 fine.

The sole issue for resolution is whether or not respondent Yolanda Ricafort is liable for dishonesty.

Our Ruling

We concur with the findings of the investigating judge and the OCA that respondent is guilty of dishonesty for deliberately punching out the bundy card of her brother, Rolando Ricafort, in the afternoon of July 15, 2005.

The defense advanced by respondent that she only accidentally punched Rolando's bundy card cannot stand against the evidence on record to the contrary. Her letter[9] dated August 15, 2005 to the Court Administrator showed otherwise. She there stated that her uncertainty about finding Rolando caused her to punch the bundy card of the latter.

The pertinent portion of the letter reads:

x x x Everybody fall in line again for the punching of the card in the bundy clock while I went around searching for Rolando but again I could not find him. Frightened of what might had happened to him I ran toward the tricycle and went home. When I arrived home I was told that Rolando received an urgent call from her daughter Rachel Ricafort, my niece and a fourth year High School. She had an asthma attack and she had to be rushed home to be nebulized. Rolando was not anymore in the house because he went back to the office to punch his card but I have already punched it, thinking of the uncertainty of finding him.[10] (Underscoring supplied)

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[9] *Rollo,* p. 14.

[10] *Id*.

It is clear that respondent punched out first her bundy card before punching out Rolando's bundy card. Also, the version of complainant's witnesses belie completely respondent's defense. There being no evidence tending to question the motive and integrity of said witnesses, their testimonies should be given full credit.[11]

Incidentally, in respondent's letter-explanation dated October 28, 2006,[12] she admitted having earlier accidentally punched the bundy card of Rolando Ricafort on October 26, 2004 and promised not to repeat the same act in the future. Respondent, however, was not formally charged for that incident.

According to **Philippine Law Dictionary**, by Federico B. Moreno, third edition, **dishonesty** means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith."

Evidently, respondent committed the act complained of to cover up Rolando's absence in the office on that afternoon of July 15, 2004.

There is no *iota* of doubt that complainant's act was not only intentional but also deceitful. Respondent miserably failed to keep up with the strictest standard of conduct required of court personnel who, upon assumption of duty, must live up to the tenets of honesty and integrity.

No less than the Constitution mandates that all public officials and employees should serve with responsibility, integrity and efficiency. Thus, the conduct and behavior of everyone committed with an office charged with the dispensation of justice from the presiding judge to the lowliest clerk is circumscribed with the heavy burden of responsibility. The judiciary expects the best from all its employees who must be paragons of justice.[13] The

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[11] *People v. Santos,* G.R. No. 127492, January 16, 2004, 420 SCRA 37.

[12] *Supra* note 5.

[13] *Ibay v. Lim,* A.M. No. P-99-1309, September 11, 2000, 340 SCRA 107.

conduct of each employee of a court of justice must, at all times, not only be characterized with propriety and decorum, but above all else, be above suspicion.[14]

In *Romero v. Castillano*,[15] this Court held that a court employee's acts of appropriating for her benefit a fellow employee's salaries by falsifying the latter's daily time records and special power of attorney constitute gross dishonesty and grave misconduct.

Section 52, Rule IV of the Uniform Rules on Administrative Cases provides that dishonesty is a grave offense and punishable by dismissal even on the first time of commission.

Taking into account respondent's forty (40) years of service in the government, the OCA submits that the penalty imposable upon her is suspension. Considering, however, that suspension can no longer be imposed due to respondent's retirement on February 14, 2007, We opt to impose upon her a fine of Twenty Thousand Pesos (₱20,000.00).

WHEREFORE, premises considered, the Court finds respondent Yolanda L. Ricafort *GUILTY* of dishonesty and imposes upon her a fine of **Twenty Thousand Pesos (₱20,000.00)** to be deducted from whatever retirement benefits may be due her.

SO ORDERED.

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

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[14] *Leonor v. Delfin,* A.M. No. P-98-1274, September 9, 1999, 314 SCRA 10.

[15] A.M. No. P-93-960, November 18, 2002, 392 SCRA 1.

THIRD DIVISION

[G.R. No. 163749. September 26, 2008]

SPOUSES JULIAN SANTIAGO, SR. AND LEONILA SANTIAGO AND SPOUSES LIM JOSE ONG and MIMI ONG LIM, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS as successor in interest of Far East Bank & Trust Co., substituted by Investments 2234 Philippines Fund I (SPV-AMC), Inc.,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE THEREOF UPON CORPORATION MUST BE MADE TO THE OFFICER NAMED IN THE RULES; REASON. — The designation of persons or officers who are authorized to accept summons for a domestic corporation or partnership is now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure. The rule now states "general manager" instead of only "manager"; "corporate secretary" instead of "secretary"; and "treasurer" instead of "cashier." The phrase "agent, or any of its directors" is conspicuously deleted from the new rule. Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise, the service is insufficient. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him.

2. ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE RULE ON THE SERVICE OF SUMMONS, NO LONGER APPLICABLE. — The matter of whether petitioners can invoke substantial compliance with Section 11, Rule 14 of the

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[1] Motion for substitution filed by Investments 2234 Philippines Fund I (SPV-AMC), Inc. was granted in a Resolution dated September 12, 2007.

1997 Rules of Civil Procedure, has been settled in *Mason v. Court of Appeals*, thus: x x x We held that there was no valid service of summons on Villarosa as service was made through a person not included in the enumeration in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, which revised Section 13, Rule 14 of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure. x x x At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process. Moreover, in the recent case of *Bank of Philippine Islands v. Santiago*, it was ruled that service of the original summons upon the branch manager of BPI's Sta. Cruz, Laguna branch did not bind the corporation, for the branch manager was not included in the enumeration in the statute of the persons upon whom service can be validly made in behalf of the corporation; thus, such service was therefore void and ineffectual. It was only upon the issuance and proper service of new summons validly served on BPI's corporate secretary that the RTC acquired jurisdiction to issue the Order granting the application for the issuance of a writ of preliminary injunction filed by the plaintiffs therein.

3. ID.; MOTION TO DISMISS; WHEN THREE-DAY NOTICE RULE WAS LIBERALLY CONSTRUED AS THE PURPOSE OF THE LAW WAS NOT DEFEATED. — Private respondent filed a memorandum in support of its opposition to the petition for preliminary injunction or TRO and moved for the dismissal of the complaint claiming, among others, that the court had no jurisdiction over the person of BPI. Even if it would appear that the memorandum was a motion to dismiss, which was filed on the same day where the court's hearing for the issuance of

TRO was set, the non-observance of the three-day notice rule would not affect the RTC's Order dismissing the case for lack of jurisdiction over the person of private respondent. The purpose of the law in requiring the filing of motions at least three days before the hearing thereof is to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the movant. In this case, during the initial hearing for the issuance of the TRO on September 13, 2002, counsel of private respondent had already raised the issue of the court's lack of jurisdiction over the private respondent, since the summons was not served on any of the persons enumerated under Section 11, Rule 14. Notably, in that same hearing, petitioners' counsel presented arguments and even cited jurisprudence to prove the validity of the service of summons on private respondent's branch managers in Dumaguete City. Thus, when BPI filed its memorandum/motion to dismiss on September 16, 2002, there was no element of surprise to speak of, as petitioners knew that private respondent was already questioning the jurisdiction of the court over it, but this time it had jurisprudence cited in its memorandum to support its argument. Procedural due process is not based solely on a mechanistic and literal application of a rule, such that any deviation is inexorably fatal. Rules of procedure, and these include the three-day notice requirement, are liberally construed to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding. Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.

APPEARANCES OF COUNSEL

Tumangan Payumo and Partners for petitioners.
Yap-Siton Law Offices for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed by Spouses Julian Santiago, Sr. and Leonila Santiago (Spouses

Santiago) and Spouses Lim Jose Ong and Mimi Ong Lim (Spouses Lim), seeking to reverse and set aside the Decision[2] dated November 14, 2003 and the Resolution[3] dated June 2, 2004 issued by the Court of Appeals (CA) in CA-G.R. SP No. 73110.

Petitioners Spouses Santiago were the original owners of three parcels of land covered by TCT Nos. 3943, 9797 and 15131, all situated in *Barrio* Piapi, Dumaguete City. They mortgaged the said properties to spouses Bienvenido and Theresa Deloria (spouses Deloria) as security for their loan in the amount of ₱2,370,000.00. On August 24, 1994, Far East Bank and Trust Company (FEBTC) wrote a letter[4] addressed to spouses Deloria stating that the bank had approved a term loan facility in favor of petitioner Lim Jose Ong, and among the conditions for the approval of the facility was that the entire proceeds shall be exclusively used to purchase the three parcels of land, with its improvement mortgaged to them; and that the amount of ₱2,370,000.00 shall be delivered to spouses Deloria in consideration of their release of the mortgage.

Subsequently, a deed of sale over the three parcels of land was executed by Spouses Santiago in favor of Spouses Lim; and new TCT Nos. 23276, 23277 and 23278 were issued to Spouses Lim.

On September 29, 1994, Spouses Lim executed in favor of FEBTC a real estate mortgage over the three parcels of land to secure the amount of ₱2,500,000.00 loaned from the bank; the mortgage was made to stand as a security for the payment of the loan, as well as those loans that the mortgagee may extend to the mortgagor, including interest and expenses or any other obligation owed to the mortgagee whether direct or indirect, principal or secondary, as appearing in the accounts, books and records of the mortgagee. Petitioner Lim Jose Ong was also an

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[2] Penned by Justice Buenaventura J. Guerrero, concurred in by Justices Mercedes Gozo-Dadole and Mariano C. del Castillo, *rollo*, pp. 31-36.

[3] *Id.* at 37.

[4] *Rollo*, pp. 57-58.

officer of Marichris Development Corporation (MDC), one of FEBTC's valued clients, which has a credit line with the bank. However due to the business slow-down brought about by the economic crisis, MDC through petitioner Lim Jose Ong requested a restructuring of its loan term, which was granted by the FEBTC.

Meanwhile, FEBTC merged with the Bank of the Philippine Islands (private respondent), with the latter as the surviving corporation. Thus, private respondent assumed all the rights, privileges and obligations of FEBTC.

As Spouses Lim failed to pay their indebtedness with the bank in the total amount of ₱18,630,011.96, private respondent filed on August 2, 2002 an application for extra-judicial foreclosure of real estate mortgage[5] with the Office of the Clerk of Court, Dumaguete City, and the case was raffled to sheriff Ramoneto Hedriana. The public auction was scheduled on September 13, 2002 at 9 o'clock in the morning.[6]

Petitioners filed with the Regional Trial Court (RTC) of Negros Oriental, Dumaguete City, a complaint[7] for injunction, damages and accounting with prayer for preliminary injunction and/or temporary restraining order against private respondent as successor-in-interest of FEBTC. They also filed together with the complaint a motion for special raffle in view of the urgency of the relief sought and for the issuance of an *ex-parte* temporary restraining order (TRO). In their complaint, petitioners alleged that since petitioners Spouses Santiago, as the original owners of the three parcels of land, could not pay their mortgage loan with the spouses Deloria, they tried to apply for a loan with FEBTC but was told that they should be accommodated by a person with a good credit standing with the bank; that the titles to their land should be transferred to the accommodating party; that Spouses Santiago sought the help of petitioner Lim, who had a good reputation and credit facility with the bank, and who

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[5] *Rollo*, pp. 72-74.

[6] *Id.* at 88.

[7] Docketed as Civil Case No. 13240.

accommodated them; that titles to the three parcels of land were transferred to Spouses Lim who subsequently executed a real estate mortgage over the three parcels of land in favor of FEBTC to secure the ₱2.5 million loan of petitioners Spouses Lim; that the fact of accommodation was with prior approval of FEBTC officials, since they had been directly transacting with the original mortgagees for the release of the mortgage; that petitioners Spouses Santiago, being the real borrowers, have been paying the loan after the execution of the mortgage, as appearing on various FEBTC official receipts, in which it was stated: "Julian Santiago for the account (FAO) of Lim Jose Ong"; that they had asked for, apart from the mortgage, a detailed statement of account, which was unheeded; thus, the obligation being claimed by private respondent is unliquidated.

On September 12, 2002, Executive Judge Eleuterio E. Chiu issued a TRO[8] valid for 72 hours ordering the bank or any person acting on its behalf from conducting the scheduled auction sale of the subject three parcels of land.

Summons, together with a copy of the complaint, was served on private respondent through the managers of its branches located in San Jose Street and Percedes Street, Dumaguete City. The case was raffled to Branch 33,[9] and a hearing for the issuance of the TRO was scheduled on September 13, 2002.

During the hearing, counsel for private respondent raised the issue of the RTC's lack of jurisdiction over private respondent, as the summons was served on its branch manager in Dumaguete City, and not on any one of those persons enumerated under Section 11, Rule 14 of the 1997 Rules of Civil Procedure. Petitioners' counsel had argued that service of summons even to a substation of the corporation was valid, as it was in effect served on a principal of the corporation. The RTC judge continued with the reception of petitioners' evidence and ruled that he would include in his resolution for the issuance of a TRO whether the court had jurisdiction when the summons was served only

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[8] *Rollo,* pp. 90-91.

[9] Presided by Judge Fe Lualhati D. Bustamante.

on the manager of BPI, Dumaguete Branch.[10] The continuation of the hearing was set on September 16, 2002.

On September 16, 2002, private respondent filed a memorandum[11] in support of the opposition to the petition for preliminary injunction or TRO. It moved for the dismissal of the complaint on the following grounds:

1. that the court has no jurisdiction over the person of the defending party;
2. the court has no jurisdiction over the subject matter of the claim because the proper docketing fees have not been paid;
3. that Julian Santiago, Sr. and Leonila Santiago are not the real party [sic] in interest to file this claim;
4. that this court has no jurisdiction or authority to issue injunction against extrajudicial foreclosure under Art. 3135.[12]

In the hearing of even date, petitioners argued that the memorandum was in reality a motion to dismiss; thus, it should comply with the three-day notice rule. The RTC, however, stated that petitioners' counsel was aware that during the last hearing, private respondent had insisted that the RTC had no jurisdiction over the case because of improper service of summons; that the motion was only a follow up, as counsel for private respondent could not cite authorities; that with or without authority, Rule 14 enumerated the persons on whom service of summons may be served.[13] The RTC also stated that even without the motion, it would resolve whether a TRO should be issued, and whether the court had jurisdiction over the case.[14]

On the same day, the RTC issued its Order,[15] the dispositive portion of which reads:

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[10] TSN, September 13, 2002, p. 5.

[11] *Rollo*, pp. 108-127.

[12] *Rollo*, pp. 108-109.

[13] TSN September 16, 2002, p. 58.

[14] *Id.* at 62.

[15] *Rollo*, pp. 128-129.

WHEREFORE, on the ground that this Court did not acquire jurisdiction over the defendant because of improper service of summons, the prayer for the issuance of the restraining order is hereby dismissed and this case is likewise dismissed on the same ground.[16]

Petitioners filed with the CA a petition for *certiorari* with prayer for the issuance of a TRO and injunction.

In a Resolution[17] dated October 17, 2002, the CA issued a TRO effective for 60 days, restraining private respondent from conducting the foreclosure sale of the subject properties.

On January 8, 2003, the CA issued another Resolution[18] for the issuance of a writ of preliminary injunction upon petitioners' filing of a bond in the amount of one million pesos.

On November 14, 2003, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby DISMISSED and consequently the order decreeing the issuance of a writ of preliminary injunction dated 08 January 2003 [is] set aside.

Petitioners' motion for reconsideration was denied in a Resolution dated June 2, 2004.

The CA found that the RTC did not commit any grave abuse of discretion in finding that summons served on the branch managers of BPI Dumaguete City was not valid and therefore the RTC did not acquire jurisdiction over the person of private respondent. The CA upheld the RTC's application of this Court's ruling in *E.B. Villarosa & Partner Co., Ltd v. Benito*,[19] in which it was held that the designation of persons or officers who were authorized to accept summons for a domestic

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[16] *Id.* at 129.

[17] *Id.* at 158-159.

[18] Penned by Justice Teodoro P. Regino, concurred in by Justices Buenaventura J. Guerrero and Mariano C. del Castillo; CA *rollo*, pp. 396-397.

[19] *E.B. Villarosa & Partner Co., Ltd. v. Benito*, G.R. No. 136426, August 6, 1999, 312 SCRA 65.

corporation or partnership was now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

The CA found no merit in private respondent's contention that the CA failed to acquire jurisdiction over it, since no copy of the petition for *certiorari* and motion for reconsideration were furnished to the bank through any of the persons enumerated under Section 11, Rule 14; that counsel was not one of the in-house counsels of private respondent, but was the counsel on record of the Dumaguete branch only. The CA ruled that there was no requirement of service of summons in the manner provided for under Section 11, Rule 14, relative to a special civil action of *certiorari* under Rule 65.

Hence herein petition raising the following issues:

I. WHETHER OR NOT SERVICE OF SUMMONS UPON TWO (2) BRANCH MANAGERS OF BPI IN DUMAGUETE IS A SUBSTANTIAL COMPLIANCE OF THE RULES.

II. WHETHER OR NOT BPI'S MOTION TO DISMISS VIOLATES THE THREE-DAY NOTICE RULE.

III. WHETHER OR NOT THERE IS SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE FOR THE PETITIONERS WHEN CA G.R. SP NO. 73110 WAS FILED.[20]

Petitioners filed a Motion for Leave of Court to admit the urgent motion for issuance of TRO since the notice of extra-judicial sale set the auction sale of the subject properties on September 7, 2003.

On September 6, 2004, the Court issued a TRO[21] and ordered petitioners to post a bond in the amount of two million five hundred thousand pesos which petitioners did.

The main issue for resolution is whether or not the service of summons on the branch managers of private respondent's

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[20] *Rollo*, p. 326.

[21] *Id.* at 221.

two separate branches in Dumaguete City constitutes substantial compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

The complaint was filed by petitioners in 2002 when the 1997 Rules of Civil Procedure was already in force.

Section 11, Rule 14 of the 1997 Rules of Civil Procedure provides:

> SECTION 11. *Service upon domestic private juridical entity* — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

This provision revised the former Section 13, Rule 14 of the Rules of Court, which provided that:

> SECTION 13. *Service upon private domestic corporation or partnership*. — If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors.

The designation of persons or officers who are authorized to accept summons for a domestic corporation or partnership is now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure.[22] The rule now states "general manager" instead of only "manager"; "corporate secretary" instead of "secretary"; and "treasurer" instead of "cashier." The phrase "agent, or any of its directors" is conspicuously deleted from the new rule.[23]

Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation.[24] The officer upon whom service is made must be

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[22] *E.B. Villarosa & Partners Co. Ltd. v. Benito*, *supra* note 19, at 73.

[23] *Id*.

[24] *Bank of Philippine Islands v. Santiago*, G.R. No. 169116, March 28, 2003, 519 SCRA 389, 400.

one who is named in the statute; otherwise, the service is insufficient.[25] The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him.[26]

Petitioners contend that the summons were received by two branch managers of BPI's San Jose Street and Perdeces Street, Dumaguete City on September 12, 2002; that the branch manager is the chief executive officer of the branch and the alter ego of the management within his/her jurisdiction and oversees the overall operations of the branch; that for certain, the two branch managers, upon receipt of summons, have sufficient responsibility and discretion to realize the importance of the legal papers served on them and are expected to relay to the president, or other responsible officer of the company, the complaint filed against it; that in *Millenium Industrial Commercial Corporation v. Tan*,[27] it was held that service of summons upon a defendant corporation must be made on a representative so integrated with the corporation sued as to make it a *priori* presumable that he would realize his responsibilities and know what he should do with any legal papers received by him; that clearly then, there is in this case substantial compliance with the rule on service of summons; and that the need for speedy justice must prevail over technicality.

We are not persuaded.

The matter of whether petitioners can invoke substantial compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure, has been settled in *Mason v. Court of Appeals*,[28] thus:

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[25] *Id.* citing *Delta Motors Corp. v. Pamintuan*, No. L-41667, April 30, 1976, 70 SCRA 598.

[26] *Id.*

[27] G.R. No. 131724, February 28, 2000, 326 SCRA 563.

[28] G.R. No. 144662, October 15, 2003, 413 SCRA 303, 310.

The question of whether the substantial compliance rule is still applicable under Section 11, Rule 14 of the 1997 Rules of Civil Procedure has been settled in Villarosa which applies squarely to the instant case. In the said case, petitioner E.B. Villarosa & Partner Co. Ltd. (hereafter Villarosa) with principal office address at 102 Juan Luna St., Davao City and with branches at 2492 Bay View Drive, Tambo, Parañaque, Metro Manila and Kolambog, Lapasan, Cagayan de Oro City, entered into a sale with development agreement with private respondent Imperial Development Corporation. As Villarosa failed to comply with its contractual obligation, private respondent initiated a suit for breach of contract and damages at the Regional Trial Court of Makati. Summons, together with the complaint, was served upon Villarosa through its branch manager at Kolambog, Lapasan, Cagayan de Oro City. Villarosa filed a Special Appearance with Motion to Dismiss on the ground of improper service of summons and lack of jurisdiction. The trial court denied the motion and ruled that there was substantial compliance with the rule, thus, it acquired jurisdiction over Villarosa. The latter questioned the denial before us in its petition for *certiorari*. We decided in Villarosa's favor and declared the trial court without jurisdiction to take cognizance of the case. We held that there was no valid service of summons on Villarosa as service was made through a person not included in the enumeration in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, which revised the Section 13, Rule 14 of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

Neither can herein petitioners invoke our ruling in Millennium to support their position for said case is not on all fours with the instant case. We must stress that Millennium was decided when the 1964 Rules of Court were still in force and effect, unlike the instant case which falls under the new rule. Hence, the cases cited by petitioners where we upheld the doctrine of substantial compliance must be deemed overturned by Villarosa, which is the later case.

At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process.[29]

Moreover, in the recent case of *Bank of Philippine Islands v. Santiago*,[30] it was ruled that service of the original summons upon the branch manager of BPI's Sta. Cruz, Laguna branch did not bind the corporation, for the branch manager was not included in the enumeration in the statute of the persons upon whom service can be validly made in behalf of the corporation; thus, such service was therefore void and ineffectual. It was only upon the issuance and proper service of new summons validly served on BPI's corporate secretary that the RTC acquired jurisdiction to issue the Order granting the application for the issuance of a writ of preliminary injunction filed by the plaintiffs therein.

Petitioners further contend that the motion to dismiss filed by private respondent came as a surprise, as they were not notified three days prior to the hearing thereon, and petitioners were made to oppose the motion on the same day it was filed; that a motion that does not comply with requirements of Sections 4[31] and 5,[32] Rule 15 of the Rules of Court, is a worthless piece of paper which the clerk has no right to receive, and which the court has no authority to act upon.

This time, the Court does not agree.

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[29] *Mason v. Court of Appeals*, *supra* note 28, at 310-311.

[30] *Supra* note 24, at 400-401.

[31] Sec. 4. *Hearing of motion.* — x x x

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[32] Sec. 5. *Notice of hearing* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Private respondent filed a memorandum in support of its opposition to the petition for preliminary injunction or TRO and moved for the dismissal of the complaint claiming, among others, that the court had no jurisdiction over the person of BPI. Even if it would appear that the memorandum was a motion to dismiss, which was filed on the same day where the court's hearing for the issuance of TRO was set, the non-observance of the three-day notice rule would not affect the RTC's Order dismissing the case for lack of jurisdiction over the person of private respondent.

The purpose of the law in requiring the filing of motions at least three days before the hearing thereof is to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the movant.[33] In this case, during the initial hearing for the issuance of the TRO on September 13, 2002, counsel of private respondent had already raised the issue of the court's lack of jurisdiction over the private respondent, since the summons was not served on any of the persons enumerated under Section 11, Rule 14. Notably, in that same hearing, petitioners' counsel presented arguments and even cited jurisprudence to prove the validity of the service of summons on private respondent's branch managers in Dumaguete City. Thus, when BPI filed its memorandum/motion to dismiss on September 16, 2002, there was no element of surprise to speak of, as petitioners knew that private respondent was already questioning the jurisdiction of the court over it, but this time it had jurisprudence cited in its memorandum to support its argument.

Procedural due process is not based solely on a mechanistic and literal application of a rule, such that any deviation is inexorably fatal.[34] Rules of procedure, and these include the three-day notice requirement, are liberally construed to promote

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[33] *J.M. Tuazon & Co., Inc. v. Magdangal*, No. L-15539, January 30, 1962, 4 SCRA 84, 86.

[34] *E & L Mercantile, Inc. v. Intermediate Appellate Court*, No. 70262, June 25, 1986, 142 SCRA 385, 392.

their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding.[35] Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.[36]

Moreover, as the RTC correctly observed, it would still resolve the issue of jurisdiction over the person of private respondent even without taking into consideration the memorandum as the issue of jurisdiction was already raised during the initial hearing for the issuance of the TRO on September 13, 2002, which must be ruled upon before the RTC could issue the TRO.

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision dated November 14, 2003 and the Resolution dated June 2, 2004 issued by the Court of Appeals in CA-G.R. SP No. 73110 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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[35] *E & L Mercantile, Inc. v. Intermediate Appellate Court, id.*

[36] *E & L Mercantile, Inc. v. Intermediate Appellate Court, supra* note 34, at 392.

THIRD DIVISION

[G.R. No. 164314. September 26, 2008]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **PICOP RESOURCES, INC.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL PERIOD MUST BE RECKONED FROM THE DATE OF THE DENIAL OF THE FIRST AND ONLY MOTION FOR RECONSIDERATION. — The appellate court committed no reversible error, much less grave abuse of discretion, in issuing the questioned resolutions. Section 4 of Rule 43 of the Revised Rules of Court clearly states that an appeal shall be taken within fifteen (15) days from the denial of petitioner's motion for reconsideration. The same section also provides that only one motion for reconsideration shall be allowed. It is unmistakably clear that the appeal period must be reckoned from the date of the denial of the first and only motion for reconsideration allowed by the rules. Petitioner's fatal mistake was to assume otherwise.

2. ID.; ID.; MOTION FOR RECONSIDERATION; SECOND MOTION, NOT ALLOWED; APPLICATION. — In appeals to the OP, Section 7 of AO No. 18 similarly proscribes filing more than one motion for reconsideration. It states: Decisions/ resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period. **Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases**. A second motion for reconsideration is a prohibited pleading. It is forbidden except for extraordinarily persuasive reasons and only upon obtaining express leave. The facts and material dates are undisputed. The SEC filed a motion for reconsideration before the OP on October 13, 2003. It was denied in a Resolution dated December 19, 2003. The Commission received a copy of the Resolution on January 8, 2004. A second motion for reconsideration was

filed by the SEC on January 23, 2004. This was also denied by the OP through a Resolution dated March 19, 2004. The SEC elevated the matter to the CA. On April 1, 2004, it initially filed a motion for extension to file a petition for review under Rule 43. The Commission requested an extension of fifteen (15) days from April 3, 2004 until April 18, 2004. This reckoning period is the fatal blow to the SEC appeal. To reiterate, the SEC erroneously assumed that the appeal period is fifteen (15) days from the denial of its second motion for reconsideration or March 19, 2004. It believed that it has until April 3, 2004 within which to file a petition for review with the CA. It was mistaken. The same issue was the focal point in *Obando v. Court of Appeals*. In *Obando*, this Court maintained the prohibitory nature of a second motion for reconsideration and its gnawing implications in the appeal process. Said the Court: x x x [T]he Rules of Court are explicit that a second motion for reconsideration shall not be allowed. In this case, petitioners filed not only a second motion for reconsideration, but a third motion for reconsideration as well. **Since the period to appeal began to run from the denial of the first motion for reconsideration**, the notice of appeal which petitioners filed six months after the denial of their first motion for reconsideration was correctly denied for having been filed late.

3. ID.; ID.; ID.; EFFECT OF FILING A SECOND MOTION FOR RECONSIDERATION. — Since the second motion for reconsideration was not allowed, this Court ruled that it did not toll the running of the period to appeal. More so, would a third motion for reconsideration. In *Dinglasan v. Court of Appeals*, this Court explained the reason why it is unwise to reckon the period of finality of judgment from the denial of the second motion for reconsideration. To rule that finality of judgment shall be reckoned from the receipt of the resolution or order denying the second motion for reconsideration would result to an **absurd situation whereby courts will be obliged to issue orders or resolutions denying what is a prohibited motion in the first place**, in order that the period for the finality of judgments shall run, thereby, prolonging the disposition of cases. Moreover, such a ruling would allow a party to forestall the running of the period of finality of judgments by virtue of filing a prohibited pleading; such a situation is not only illogical but also unjust to the winning party. The same principle is likewise applicable by analogy in the

determination of the correct period to appeal. Reckoning the period from the denial of the second motion for reconsideration will result in the same absurd situation where the courts will be obliged to issue orders or resolutions denying a prohibited pleading in the first place. The overt consequence of the introduction of a prohibited pleading was pointed out succinctly by this Court in *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*: It is obvious that a prohibited pleading cannot toll the running of the period to appeal since such pleading cannot be given any legal effect precisely because of its being prohibited. Clearly, a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect.

4. ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON PROSCRIPTION OF FILING A SECOND MOTION FOR RECONSIDERATION, NOT APPLICABLE; REASONS. — It bears stressing, however, that the proscription of filing a second motion for reconsideration admits of exceptions. AO No. 18, Section 7 may allow more than one motion for reconsideration in "exceptionally meritorious cases." The determination of which cases fall under such an exception is within the discretion of the OP. Sadly, there is nothing in the present case that would warrant an exception. The CA has no other option but to apply the clear provision of the law when it comes to appeal. True, procedural rules may be relaxed in the interest of substantial justice. However, it is not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. In *Spouses Galang v. Court of Appeals*, this Court explained: x x x Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. The bare invocation of "substantial justice" is not a magic wand that will compel the court to suspend the rules of procedure. Rather, the appellate court needs to assess if the appeal is absolutely meritorious on its face. Only after such finding, can it ease the often stringent rules of procedure. The circumstances obtaining in this case clearly show that such relaxation of rules is unwarranted.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; GUIDELINES IN RESOLVING DISPUTES AS TO THE INTERPRETATION BY THE AGENCY OF ITS OWN RULES, REITERATED. — In *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, the Court laid the guidelines in resolving disputes concerning the interpretation by an agency of its own rules and regulations, to wit: (1) Whether the delegation of power was valid; (2) Whether the regulation was within that delegation; (3) Whether it was a reasonable regulation under a due process test.

6. ID.; ID.; ID.; ID.; APPLICATION OF THE GUIDELINES. — In the case under review, there is an evident violation of the due process requirement. It is admitted that the SEC failed to satisfy the requirements for promulgation when it filed the required copies of the said regulation at the UP Law Center only fourteen (14) years after it was supposed to have taken effect. The SEC violated the due process clause insofar as it denied the public prior notice of the regulations that were supposed to govern them. The SEC can not wield the provisions of the 1990 Circular against PICOP and expect its outright compliance. The circular was not yet effective during the time PICOP filed its request to extend its corporate existence in 2002. In fact, it was only discovered in 2004, fifteen (15) days before the SEC filed its second motion for reconsideration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Siguion Reyna Montecillo and Ongsiako for respondent.

D E C I S I O N

REYES, R.T., *J.*:

A party generally advocates the rules for his benefit, but invokes exceptions when he violates it. ***Karaniwang isinusulong ng isang panig ang tuntunin para sa kanyang kapakanan, ngunit humihingi ng pagtatangi kapag siya ang lumalabag nito***.

The aphorism finds relevance in this petition for review on *certiorari*[1] of two Resolutions[1-a] of the Court of Appeals (CA). The first Resolution denied the motion for extension to file a petition for review, the second denied the motion for reconsideration.

The Facts

On March 26, 2002, respondent PICOP Resources, Inc. (PICOP) filed with petitioner Securities and Exchange Commission (SEC) an application for amendment of its Articles of Incorporation (AOI) extending its corporate existence for another fifty (50) years. PICOP paid the filing fee of ₱210.00 based on SEC Memorandum Circular No. 2, Series of 1994 (1994 Circular.)[2]

The SEC, however, informed PICOP of the appropriate filing fee of ₱12 Million, or 1/5 of 1% of its authorized capital stock of ₱6 Billion.[3] PICOP sought clarification of the applicable filing fee and the reduction of the amount of ₱12 Million prescribed by the SEC.[4] What followed were several exchanges of correspondence on the applicable filing fee for amended AOI extending the corporate term of PICOP.[5]

Through Director Benito A. Cataran of the Company Registration and Monitoring Department, the SEC held that the ₱12 Million assessment[6] is based on Republic Act (RA) No. 3531.[7]

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[1] Treated here as petition for *certiorari*.

[1-a] *Rollo*, pp. 155 & 157. Dated June 30, 2004 and May 3, 2004, respectively. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Marina L. Buzon and Hakim S. Abdulwahid, concurring.

[2] *Id.* at 241.

[3] *Id.* at 266. Through a letter dated April 9, 2002. Signed by Atty. Ferdinand B. Sales, Assistant Director of the Corporate and Partnership Division.

[4] *Id.* at 267. Through a letter dated April 18, 2002.

[5] *Id.* at 271-302.

[6] *Id.* at 271-272. Through a letter dated May 30, 2002.

[7] An Act to Further Amend Section Eighteen of the Corporation Law, Act Numbered One Thousand Four Hundred Fifty-Nine, as Amended.

This Act provides that in case an amendment of the AOI consists of extending the term of corporate existence, the SEC shall be entitled to collect and receive the same fees collectible under existing law for the filing of AOI.[8]

PICOP elevated the matter to the SEC *En Banc*.[9] It asked for the reduction of the filing fee from ₱12 Million to ₱210.00. The present SEC Revised Schedule of Fees [10] (2001 Circular) does not provide varying filing fees for amended AOI depending on the purpose of the amendment to be introduced. [11] Neither did the previous Schedule of Fees (1994 Circular) allow SEC to collect and receive the same fees for amendment of AOI as an original filing.[12]

Under the latter Circular, the examining and filing fee for amended AOI of both stock and non-stock corporations is only ₱200.00.[13]

The SEC *En Banc*, through Commissioner Jesus E.G. Martinez, denied PICOP's request.[14] He justified the Commission's decision in the following tenor:

This Commission maintains the position that there is no legal basis to exempt PICOP Resources, Inc. from paying the filing fee as assessed by the CRMD.

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[8] Republic Act No. 3531, Sec. 1. Section eighteen of Act Numbered One thousand four hundred and eighty-nine as amended, is hereby further amended to read as follows:

Sec. 18. x x x

x x x Provided, however, That where the amendment consists in extending the term of corporate existence the Securities and Exchange Commissioner shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law for the filing of articles of incorporation.

[9] *Rollo,* pp. 273-277. Through a letter dated July 2, 2002.

[10] Dated August 15, 2001.

[11] *Rollo,* p. 241.

[12] *Id*.

[13] *Id*.

[14] *Id.* at 278-279. Through a letter dated July 16, 2002.

The assessed fee is based on the pertinent provisions of R.A. 3531. Although SEC memorandum Circular No. 2, Series of 1994 and the Schedule of Revised Fees approved on 23 July 2001 do not provide for a filing fee for extensions of term, these do not limit the Securities and Exchange Commission from imposing the prevailing fees.[15]

However, the SEC *En Banc* reduced the filing fee to ₱6 Million by stating:

x x x there appears to be no basis for said fee to be computed at the revised rate of 1/5 of 1% of the authorized capital stock since the formula which was contemplated in SEC Circular Series 1986 is 1/10 of 1% of the authorized capital stock. To adapt (*sic*) the former would be tantamount to a violation of the requirement to properly apprise the public of substantive change.[16]

PICOP sought a reconsideration[17] of the *En Banc* ruling. It argued that RA No. 3531 has been repealed by the Corporation Code of 1980 and Presidential Decree 902-A.[18] Section 139[19] of the Corporation Code authorizes the SEC to collect and receive fees as authorized by law or by rules and regulation promulgated by the SEC.

Along this line, PICOP posited that SEC Memorandum Circular No. 1, Series of 1986 (1986 Circular) rules on the specific subject matter of "Filing Fees for Amended Articles of Incorporation Extending the Term of Corporate Existence." The prescribed filing fee is 1/10 of 1% of the authorized capital

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[15] *Id*.

[16] *Id*.

[17] *Id.* at 280-287. Through a letter dated July 24, 2002.

[18] Reorganization of the Securities and Exchange Commission with additional powers and placing the said agency under the administrative supervision of the Office of the President (1976).

[19] Corporation Code, Sec. 139 provides:

SEC. 139. *Incorporation and other fees.* — The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission.

stock, with the qualification that it should not be less than ₱200.00 or more than ₱100,000.00. PICOP pointed out that no equivalent provision appears in any of the subsequent SEC circulars such as the 1994 and 2001 circulars. Hence, the 1986 Circular should prevail.[20]

The SEC *En Banc* denied once more PICOP's request to reconsider the earlier ruling and reverted to the ₱12 Million assessment.[21] It maintained that the provision on the maximum imposable fee under the 1986 Circular has been amended by the 1994 Circular which removed the maximum imposable fee.[22] Furthermore, the SEC *En Banc* explained that contentions that its 2001 Circular was not published are erroneous. There was, in fact, due publication in *The Manila Standard* on July 31, 2001. Accordingly, the 2001 Circular became effective on August 15, 2001. Thus, the public was properly apprised of the changes in fees.[23]

On August 12, 2002, PICOP paid under protest the amount of ₱11,999,790.00. This was in addition to its original payment of ₱210.00 to cover the SEC-prescribed filing fee.[24] Then PICOP again moved for reconsideration.[25] This was denied by SEC Chairperson Lilia R. Bautista.[26]

Dissatisfied, PICOP appealed the matter to the Office of the President (OP).[27] It raised the following issues: (1) whether or not the OP has jurisdiction to entertain the appeal; and (2) in the event that the OP has jurisdiction, how much is the filing

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[20] *Rollo,* p. 242.

[21] *Id.* at 288-289. Through a letter dated August 6, 2002.

[22] *Id.* at 242.

[23] *Id.*

[24] *Id.* at 290-293. Accompanied by a letter dated August 12, 2002.

[25] *Id.* at 296-299. Through a letter dated August 14, 2002.

[26] *Id.* at 300-301. Through a letter dated August 15, 2002.

[27] *Id.* at 242.

fee for the amendment of PICOP's AOI to extend the term of its corporate existence?

OP Disposition

On September 22, 2003, the OP decided in favor of PICOP, disposing as follows:

> WHEREFORE, premises considered, the instant appeal is GRANTED and the questioned SEC Order dated August 15, 2002 SET ASIDE. Accordingly, it is hereby DECLARED that the applicable filing fee for the extension of the term of corporate existence of the appellant is ₱100,000, pursuant to SEC Memorandum Circular No. 1, s. of 1986. Consequently, the SEC is ordered to REFUND whatever amount that the appellant was required to pay in excess.
>
> SO ORDERED.[28]

The OP maintained that even with the issuance of Executive Order (EO) No. 192,[29] it retained its appellate jurisdiction over the SEC. EO No. 192 merely provided for the transfer of the administrative supervision of the SEC back to the Department of Finance from the OP.[30]

Under Section 38, Chapter 7, Book IV of the Administrative Code of 1987, administrative supervision does not extend to "the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions."[31] Such is rightfully within the ambit of the presidential power of supervision and control,[32] which includes the authority to review, approve, reverse, or modify acts and decisions of subordinate officials or units.[33]

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[28] *Id.* at 244.

[29] Transferring the Securities and Exchange Commission from the Office of the President to the Department of Finance (2000).

[30] *Rollo,* p. 243.

[31] *Id*.

[32] CONSTITUTION (1987), Art. VII, Sec. 17.

[33] Administrative Code (1987), Book IV, Chap. 7, Sec. 38.

The OP added that EO No. 192 does not carry an express repeal of EO No. 60.[34] Section 2 of EO No. 60[35] specifically provides that "**matters not expressly appealable to the Court of Appeals under present circulars of the Supreme Court of the Philippines are hereby declared appealable to the Office of the President**." Hence, the OP retains its appellate jurisdiction in the instant case.

Having established its jurisdiction over the case, the OP disposed of the main issue, thus:

> The SEC relies on that specific provision in RA 3531 which provides that where the amendment consists in extending the term of the corporate existence, the SEC shall be entitled to collect and receive for the filing of the amended articles of incorporation "the same fees collectible under existing law for the filing of articles of incorporation." The fundamental flaw in this position is that SEC is unable to point to an existing law that justifies the imposition of the fee rate of 1/5 of 1% of the authorized capital stock.
>
> On the other hand, appellant has identified the 1986 Circular, whose **specific subject matter is "Filing Fees for Amended Articles of Incorporation Extending the Term of Corporate Existence."** Under this, it is explicit that the applicable fee for stock corporations is "1/10 of 1% of the authorized capital stock, **but not less than Php200 nor more than Php100,000**."[36]

The OP pointed out that unlike the 1994 and 2001 Circulars relied on by the SEC, the 1986 Circular specifically addresses

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[34] Transferring the Securities and Exchange Commission from the Department of Finance to the Office of the President (1999).

[35] Executive Order No. 60, Sec. 2 provides:

SECTION 2. The Office of the President, consistent with the provisions of Presidential Decree No. 902-A and as may be authorized under Section 38, Chapter 7, Title III, Book IV of the Administrative Code, shall assume all oversight and other functions, administrative and otherwise, over the SEC. Therefore, matters not expressly appealable to the Court of Appeals under present circulars of the Supreme Court of the Philippines are hereby declared appealable to the Office of the President.

[36] *Rollo,* p. 244.

the matter of filing fees on extension of corporate existence. Further, going by the tenet of statutory construction that a special rule cannot be repealed, amended, or altered by a subsequent general rule,[37] the OP concluded that the 1986 Circular cannot be repealed, amended, or altered by the 1994 or 2001 Circulars.[38] The fees provided by the said earlier Circular remain the applicable filing fees.

Two Motions for Reconsideration

By a first motion, the SEC sought a reconsideration. This was **denied** by the OP through a Resolution dated December 19, 2003. It did not find any new matter sufficiently persuasive to modify its earlier ruling.[39]

Although aware of the prohibition against a second motion for reconsideration, petitioner filed such a motion, compelled by an alleged newly-found evidence. It prayed for the OP's acceptance of SEC Circular No. 2, Series of 1990 (1990 Circular) which removed the filing fee ceilings provided for in the 1986 Circular.[40] Thus, the prescribed filing fee in cases of filing amended AOI for extending the corporate term is 1/10 of 1% of the authorized capital stock.

The SEC also enumerated the subsequent EOs and Circulars[41] which called for the increase in SEC fees and charges. The

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[37] *Id*.

[38] *Id*.

[39] *Id.* at 246-247.

[40] *Id.* at 360-372.

[41] (1) Executive Order No. 159, Directing All Departments, Bureaus, Offices, Units and Agencies of the national Government, Including Government-Owned or Controlled Corporations, to Revise Their Fees and Charges at Just and Reasonable Rates Sufficient to Recover at Least the Full Cost of Services Rendered (1994).

(2) SEC Memorandum Circular No. 2, Series of 1994, New Fees and Charges (2004).

(3) Executive Order No. 197, Directing All Departments, Bureaus, Commissions, Agencies, Offices and Instrumentalities of the National Government,

latest of these was the 2001 Circular, which now prescribes the formula of 1/5 of 1% of the authorized capital stock.

The SEC likewise appealed for the OP's consideration of the supervening event which caused the 1990 Circular to be misplaced. The Commission reorganized and streamlined its operations and functions after the effectivity of RA No. 8799 (Securities Regulation Code). As consequence, one-half of its personnel were separated.[42] The offices of Corporate and Legal Department and Examination and Appraisers Department were abolished. These offices were in charge of implementing and enforcing circulars regarding examination and filing fees for amendment of AOI.[43]

It was this transfer of offices and personnel following the reorganization that resulted in the loss and displacement of the 1990 Circular. It was only upon diligent search that the said Circular was found.[44]

On March 19, 2004, the OP **denied** the SEC's second motion for reconsideration for being a prohibitory pleading.[45] It cited Section 7 of Administrative Order (AO) No. 18,[46] which provides that only **one** motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.[47]

Including Government-Owned and Controlled Corporations, to Increase Their Rates of Fees and Charges by Not Less Than 20 Percent (2000).

(4) DOF-DBM Joint Circular No. 2000-4, Revised Rates of Fees and Charges (2001).

[42] *Rollo,* p. 248.

[43] *Id.* at 366.

[44] *Id.*

[45] *Id.* at 248-249.

[46] Administrative Order No. 18, Sec. 7 provides:

SECTION 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.

[47] *Rollo,* p. 248.

The OP ruled that the SEC's explanation makes out a case of negligence without any showing it was excusable.[48] The OP found it self-serving and unbelievable that the Commission was unable to "unearth" the 1990 Circular for more than three (3) years. Yet, it was able to produce it in a matter of fifteen (15) days in time for its second motion for reconsideration.

Of greater curiosity to the OP was the submission to the U.P. Law Center of certified true copies of the 1990 Circular only on the same day of the filing of the second motion for reconsideration. This betrayed the SEC's own acknowledgment that such requirement was not earlier complied with. It is clear then that 1990 Circular was not effective at the time PICOP applied for the extension of its corporate term.

Unyielding, the SEC brought the matter to the CA.

CA Ruling

The SEC initially filed a motion for extension to file a petition for review under Rule 43. It requested for an additional fifteen (15) days from April 3, 2004 to file its pleading.[49]

On May 3, 2004, the CA through its first Resolution denied the motion for having been filed beyond the reglementary period.[50]

The CA said:

> Under Section 4, Rule 43 of the Revised Rules of Court, only one (1) motion for reconsideration is allowed. Thus, being a prohibited pleading, the filing of the second motion for reconsideration before the agency *a quo* **did not toll the running of the period within which to file a petition for review, which expired fifteen (15) days after petitioner received a copy of the December 19, 2003 Resolution of the Office of the President**.[51] (Emphasis supplied)

The SEC erroneously reckoned the period to file its petition for review from March 19, 2004 or the date of the OP's denial

[48] *Id.* at 249.

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

[50] *Id.* at 157.

[51] *Id.*

of its **second** motion for reconsideration. The filing period actually expired on January 3, 2004 or seventeen (17) days before the Commission even filed its prohibited pleading with the OP.

The SEC sought reconsideration of the CA's first Resolution.[52] This was subsequently **denied** via a June 30, 2004 Resolution.[53] The CA ratiocinated:

> We have carefully studied subject Motion for Reconsideration in the light of the grounds assigned in support thereof *vis-à-vis* those interposed by the respondent in its Opposition, and We are not prepared to reverse or set aside Our resolution of dismissal.[54]

Further, the CA held:

> Besides, even on the substantive aspect, We find no *prima facie* error committed by the Office of the President in reaching its conclusion. Indeed, the petition is patently without merit and the questions raised therein are too unsubstantial to require consideration (Sec.8, Rule 43, Rules of Court).[55]

Issues

Petitioner has resorted to the present recourse and ascribes to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN ISSUING THE RESOLUTION DATED MAY 3, 2004 DENYING PETITIONER'S MOTION FOR EXTENSION DATED MAY 31, 2004 AND, CONSEQUENTLY, DISMISSING THE PETITION IN CA-G.R. SP NO. 83179.

II

THE HONORABLE COURT OF APPEALS ERRED IN ISSUING THE RESOLUTION DATED JUNE 30, 2004 DENYING PETITIONER'S

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[52] *Id.* at 229-240.

[53] *Id.* at 155.

[54] *Id.*

[55] *Id.*

MOTION FOR RECONSIDERATION (OF THE MAY 3, 2004 RESOLUTION).

III

THE HONORABLE COURT OF APPEALS ERRED IN FINDING NO *PRIMA FACIE* ERROR COMMITTED BY THE OFFICE OF THE PRESIDENT IN SETTING ASIDE PETITIONER SEC'S ORDER DATED AUGUST 15, 2002 (DENYING RESPONDENT'S REQUEST FOR RECONSIDERATION OF THE SEC ORDER ASSESSING IT ₱12,000,000.00 AS FILING FEE FOR THE AMENDMENT OF ITS ARTICLES OF INCORPORATION EXTENDING ITS CORPORATE LIFE). (Underscoring supplied)[56]

Our Ruling

The appellate court committed no reversible error, much less grave abuse of discretion, in issuing the questioned resolutions. Section 4 of Rule 43 of the Revised Rules of Court[57] clearly states that an appeal shall be taken within fifteen (15) days from the denial of petitioner's motion for reconsideration.[58] The same section also provides that only one motion for reconsideration shall be allowed. It is unmistakably clear that the appeal period must be reckoned from the date of the denial of the first and only motion for reconsideration allowed by the rules. Petitioner's fatal mistake was to assume otherwise.

In appeals to the OP, Section 7 of AO No. 18 similarly proscribes filing more than one motion for reconsideration. It states:

Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after

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[56] *Id.* at 126.

[57] Rule 43, Sec. 3 provides:

Sec.4. *Period of appeal.* — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if the publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. x x x

[58] *Id.*

the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.[59] (Emphasis supplied)

A second motion for reconsideration is a prohibited pleading. It is forbidden except for extraordinarily persuasive reasons and only upon obtaining express leave.[60]

The facts and material dates are undisputed. The SEC filed a motion for reconsideration before the OP on October 13, 2003. It was denied in a Resolution dated December 19, 2003. The Commission received a copy of the Resolution on January 8, 2004.

A second motion for reconsideration was filed by the SEC on January 23, 2004. This was also denied by the OP through a Resolution dated March 19, 2004.

The SEC elevated the matter to the CA. On April 1, 2004, it initially filed a motion for extension to file a petition for review under Rule 43. The Commission requested an extension of fifteen (15) days from April 3, 2004 until April 18, 2004. This reckoning period is the fatal blow to the SEC appeal.

To reiterate, the SEC erroneously assumed that the appeal period is fifteen (15) days from the denial of its second motion for reconsideration or March 19, 2004. It believed that it has until April 3, 2004 within which to file a petition for review with the CA. It was mistaken.

The same issue was the focal point in *Obando v. Court of Appeals*.[61] In *Obando*, this Court maintained the prohibitory

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[59] Administrative Order No. 18, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines (1987).

[60] *Ortigas and Company Limited Partnership v. Judge Velasco*, 324 Phil. 483 (1996).

[61] G.R. No. 139760, October 5, 2001, 366 SCRA 673.

nature of a second motion for reconsideration and its gnawing implications in the appeal process. Said the Court:

> x x x [T]he Rules of Court are explicit that a second motion for reconsideration shall not be allowed. In this case, petitioners filed not only a second motion for reconsideration, but a third motion for reconsideration as well. **Since the period to appeal began to run from the denial of the first motion for reconsideration**, the notice of appeal which petitioners filed six months after the denial of their first motion for reconsideration was correctly denied for having been filed late. (Emphasis supplied)[62]

Since the second motion for reconsideration was not allowed, this Court ruled that it did not toll the running of the period to appeal. More so, would a third motion for reconsideration.

In *Dinglasan v. Court of Appeals*,[63] this Court explained the reason why it is unwise to reckon the period of finality of judgment from the denial of the second motion for reconsideration.

> To rule that finality of judgment shall be reckoned from the receipt of the resolution or order denying the second motion for reconsideration would result to an **absurd situation whereby courts will be obliged to issue orders or resolutions denying what is a prohibited motion in the first place**, in order that the period for the finality of judgments shall run, thereby, prolonging the disposition of cases. Moreover, such a ruling would allow a party to forestall the running of the period of finality of judgments by virtue of filing a prohibited pleading; such a situation is not only illogical but also unjust to the winning party.[64]

The same principle is likewise applicable by analogy in the determination of the correct period to appeal. Reckoning the period from the denial of the second motion for reconsideration will result in the same absurd situation where the courts will be obliged to issue orders or resolutions denying a prohibited pleading in the first place.

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[62] *Obando v. Court of Appeals, id.* at 677.

[63] G.R. No. 145420, September 19, 2006, 502 SCRA 253.

[64] *Dinglasan v. Court of Appeals, id.* at 265.

The overt consequence of the introduction of a prohibited pleading was pointed out succinctly by this Court in *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*:[65]

> It is obvious that a prohibited pleading cannot toll the running of the period to appeal since such pleading cannot be given any legal effect precisely because of its being prohibited.[66]

Clearly, a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect.

It bears stressing, however, that the proscription of filing a second motion for reconsideration admits of exceptions. AO No. 18, Section 7 may allow more than one motion for reconsideration in "exceptionally meritorious cases." The determination of which cases fall under such an exception is within the discretion of the OP. Sadly, there is nothing in the present case that would warrant an exception.

The CA has no other option but to apply the clear provision of the law when it comes to appeal. True, procedural rules may be relaxed in the interest of substantial justice. However, it is not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party.[67] In *Spouses Galang v. Court of Appeals*,[68] this Court explained:

> x x x Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[69]

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[65] G.R. No. 175163, October 19, 2007, 537 SCRA 396.

[66] *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, *id.* at 405.

[67] *Santos v. Court of Appeals*, G.R. No. 92862, July 4, 1991, 198 SCRA 806.

[68] *Spouses Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683.

[69] *Id.* at 689.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights.[70] The bare invocation of "substantial justice" is not a magic wand that will compel the court to suspend the rules of procedure.[71] Rather, the appellate court needs to assess if the appeal is absolutely meritorious on its face. Only after such finding, can it ease the often stringent rules of procedure.[72] The circumstances obtaining in this case clearly show that such relaxation of rules is unwarranted.

As this Court has said more than enough:

> Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[73]

But brushing aside the technicalities, were the OP and CA correct in declaring that the applicable filing fee is ₱100,000.00, instead of ₱12 million last assessed by the SEC *En Banc*?

We resolve the question in the affirmative. The 1986 Circular is the proper basis of the computation since it specifically provided for filing fees in cases of extension of corporate term. A proviso

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[70] *Id*.

[71] *Land Bank of the Philippines v. Ascott Holdings and Equities, Inc.*, *supra* note 65.

[72] *Cuevas v. Bais Steel Corporation*, G.R. No. 142689, October 17, 2002, 391 SCRA 192.

[73] *Land Bank of the Philippines v. Ascott Holdings and Equities, Inc.*, *supra* note 65, at 405.

of the same nature is wanting in the other circulars relied on by the SEC at the time PICOP filed its request for extension.

The rule is well-entrenched in this jurisdiction that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the courts construing such rule or regulation.[74] While this Court has consistently yielded and accorded great respect to such doctrine, it will not hesitate to set aside an executive interpretation if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[75]

In *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*,[76] the Court laid the guidelines in resolving disputes concerning the interpretation by an agency of its own rules and regulations, to wit: (1) Whether the delegation of power was valid; (2) Whether the regulation was within that delegation; (3) Whether it was a reasonable regulation under a due process test.[77]

In the case under review, there is an evident violation of the due process requirement. It is admitted that the SEC failed to satisfy the requirements for promulgation when it filed the required copies of the said regulation at the UP Law Center only fourteen (14) years after it was supposed to have taken effect.[78]

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[74] *Republic v. Sandiganbayan,* 355 Phil. 181 (1998).

[75] *Melendres, Jr. v. Commission on Elections,* 377 Phil. 275 (1999).

[76] G.R. No. 135992, January 31, 2006, 481 SCRA 163.

[77] *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation, id.* at 168.

[78] Administrative Code (1987), Book VII, Chapter 2, Secs. 3 & 4 provide:

> SEC. 3. *Filing.* — (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.
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> x x x x x x x x x

The SEC violated the due process clause insofar as it denied the public prior notice of the regulations that were supposed to govern them. The SEC can not wield the provisions of the 1990 Circular against PICOP and expect its outright compliance. The circular was not yet effective during the time PICOP filed its request to extend its corporate existence in 2002. In fact, it was only discovered in 2004, fifteen (15) days before the SEC filed its second motion for reconsideration.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168074. September 26, 2008]

EMPIRE EAST LAND HOLDINGS, INC., *petitioner, vs.* **CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONSTRUCTION CONTRACT; TWO CONDITIONS FOR THE RELEASE OF RETENTION

SEC. 4. *Effectivity.* — In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

MONEY, NOT COMPLIED WITH. — The record of the case is bereft of any evidence to show that conditions (a) and (c) were complied with. Petitioner categorically stated in all its pleadings that they were not. Surprisingly, respondent did not squarely argue this point. It relied solely on petitioner's failure to issue the certificate of completion, which prevented the acquisition of a guarantee bond and thus resulted in the non-release of the retention money. While it is true that respondent was entitled to a certificate of completion as the issuance thereof was just a ministerial duty of petitioner considering that the project had already been completed, the certificate was not the only condition for said release. It was simply a pre-requisite for the issuance of the guarantee bond. And there was no showing that the absence of the certificate of completion was the only reason why no guarantee bond was issued. If we were to apply the civil law rule of constructive fulfillment — the condition shall be deemed fulfilled if the creditor voluntarily prevented its fulfillment — then the submission of a guarantee bond may be deemed to have been complied with. But we cannot apply the rule to conditions (a) and (c), which remain as unfulfilled conditions-precedent. Since no proof was adduced that these two conditions were complied with, petitioner's obligation to release the retention money had not, as yet, arisen. We would like to emphasize, though, that this is without prejudice to respondent's compliance with the unfulfilled conditions, after which, release of the retention money must, perforce, follow.

2. ID.; ID.; ID.; CLAIM FOR ADDITIONAL OVERHEAD COSTS IS CLASSIFIED AS A CLAIM FOR ACTUAL DAMAGES; CLAIM THEREFOR MUST BE SUBSTANTIATED. — It is undisputed that the only piece of evidence presented by respondent in support of its claim for additional overhead cost was its own computation of the said expenses. It failed to adduce actual receipts, invoices, contracts and similar documents. To be sure, respondent's claim for overhead cost may be classified as a claim for actual damages. Actual damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. They indicate such losses as are actually sustained and are susceptible of measurement. As such, they must be proven with a reasonable degree of certainty. This is not the first time that a contractor's claim for additional overhead costs was denied because of insufficiency or absence of evidence to support the same. In

Filipinas (Pre Fab Bldg.) Systems, Inc. v. MRT Development Corporation, we denied FSI's claim because only "summaries," and not actual receipts, were presented during the hearing. Similarly, in the instant case, respondent, by presenting only its own computation to substantiate its claim, is not entitled even to the reduced amount of ₱1,397,642.70 which is 10% of its original claim. Instead, we altogether deny its prayer for additional overhead costs.

3. ID.; ID.; ID.; CLAIM FOR EXCAVATION FOUNDATION GRANTED ALTHOUGH NOT ORIGINALLY INCLUDED IN THE CONTRACT. — Side trimmings and the excavation of foundation were not included in respondent's original scope of work. They were, however, undertaken by the respondent upon the directive of petitioner, due to the previous contractor's refusal to resume its excavation work. These works, therefore, constitute an additional claim of respondent over and above the original contract price. A confirmation of these works had, in fact, been given by petitioner through Change Order Nos. 3 and 4 where it agreed to pay ₱250,000.00 and ₱650,000.00, respectively. This ₱900,000.00 negotiated amount referred specifically to side trimmings and hauling out of adobe soil. It is unfortunate, though, that the parties failed to arrive at a settlement as to respondent's claim for the cost of excavation of foundation. The additional works having been undertaken by respondent, and the fact of non-payment thereof having been established, we find no reason to disturb the CIAC's conclusion that respondent is entitled to its claim for the cost of excavation of foundation. As to the propriety of the award, both the CIAC and the CA were in a better position to compute the same considering that said issue is factual in nature. Significantly, jurisprudence teaches that mathematical computations, as well as the propriety of arbitral awards, are factual determinations which are better examined by the lower courts as trier of facts. Thus, we affirm the award of ₱980,376.34 for foundation excavation.

4. ID.; OBLIGATIONS; PERFORMANCE; OBLIGATION IS DEEMED FULLY COMPLIED WITH UPON ACCEPTANCE BY A PARTY WHO IS AWARE OF THE UNFINISHED WORK. — After a thorough review of the documents presented by both parties, both the CIAC and the CA concluded that the unfinished works, *i.e.*, masonry works, were actually recognized and accepted by petitioner. It thus

agreed to take over, through its new contractor, the balance of work. The only consequence of such acceptance was the deduction of the value of the unfinished works from the total contract price. This was the reason why the contract price was reduced from ₱84 million to ₱62,828,826.53. The deletion was, likewise, confirmed by respondent in a letter dated August 21, 1998. Applying Article 1235 of the Civil Code, petitioner's act exempted respondent from liability for the unfinished works. A person entering into a contract has a right to insist on its performance in all particulars, according to its meaning and spirit. But if he chooses to waive any of the terms introduced for his own benefit, he may do so. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. In the instant case, petitioner was aware of the unfinished work of respondent; yet, it did not raise any objection or protest. It, instead, voluntarily hired another contractor to perform the unfinished work, and opted to reduce the contract price. By removing from the contract price the value of the works deleted, it is as if said items were not included in the original terms, in the first place. Thus, as correctly concluded by the CIAC, and as affirmed by the CA, petitioner is not entitled to reimbursement from respondent for the expenses it incurred to complete the unfinished works.

5. ID.; ID.; DAMAGES; LIQUIDATED DAMAGES; CANNOT BE AWARDED IF THERE IS NO BREACH OF THE OBLIGATION. — Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, they are in the nature of penalties. They are attached to the obligation in order to ensure performance. As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation. Thus, the resolution of the issue of petitioner's entitlement to liquidated damages hinges on whether respondent was in default in the performance of its obligation. The completion date of the construction project was initially fixed on January 21, 1998. However, due to causes beyond the control of respondent, the latter failed to perform its obligation as scheduled. The CIAC and the CA enumerated the causes of the delay, *viz.*, the delayed issuance of building permit; additional work undertaken by

respondent, *i.e.*, bulk excavation and side trimmings; delayed payment of progress billings; delayed delivery of owner-supplied construction materials; and limitation of monthly accomplishment. All these causes of respondent's failure to complete the project on time were attributable to petitioner's fault. Still, petitioner contends that even at the start and for the entire duration of the construction, respondent was guilty of delay due to insufficient manpower and lack of technical know-how. Yet, petitioner allowed respondent to proceed with the project; thus, petitioner cannot now be permitted to raise anew respondent's alleged delay. More importantly, respondent is not guilty of breach of the obligation; hence, it cannot be held liable for liquidated damages.

APPEARANCES OF COUNSEL

Manlangit Manguinto Salomon and De Guzman for petitioner.
Tiongco Avecilla Flores and Palarca for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, of the Court of Appeals (CA) Decision[1] dated November 3, 2004 and its Resolution[2] dated May 10, 2005, in CA-G.R. SP No. 58980. The assailed decision modified the Decision[3] of the Construction Industry Arbitration Commission (CIAC) dated May 16, 2000 in CIAC No. 39-99.

The facts of the case, as found by the CIAC and affirmed by the CA, follow:

On February 12, 1997, petitioner Empire East Land Holdings, Inc. and respondent Capitol Industrial Corporation Groups, Inc.

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[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Ruben T. Reyes (now a member of this Court) and Jose C. Reyes, Jr., concurring; *rollo*, pp. 66-94.

[2] *Rollo*, pp. 97-99.

[3] *Id.* at 797-817.

entered into a Construction Agreement[4] whereby the latter bound itself to undertake the complete supply and installation of "the building shell wet construction" of the former's building known as Gilmore Heights Phase I, located at Gilmore cor. Castilla St., San Juan, Metro Manila.[5] The pertinent portion of the aforesaid agreement is quoted hereunder for easy reference:

ARTICLE II – SCOPE OF WORK

2.1. The CONTRACTOR shall complete the civil/structural and masonry works of the building based on the works (sic) items covered by the CONTRACTOR's Proposal of Complete Supply and Installation of Building Shell Wet Construction Works as indicated in the plans and specifications at the Contract Price and within the Contract time herein stipulated and in accordance with the plans and specifications. The CONTRACTOR shall furnish and supply all necessary labor, equipment and tools, supervision and other facilities needed and shall perform everything necessary for the complete and successful masonry works of the building described hereof, provided that it pertains to or is part of the above mentioned work or items covered by the Contract documents.

2.2. The scope of works as stated hereunder but not limited to the following:

a) CONCRETE WORKS — foundation and footings, tie beams, walls, columns, beams, girders, slabs, stairs, stair slabs, cement floor topping, ramps, rubbed concrete.

b) MASONRY WORKS — interior and exterior walls including stiffeners, CHB laying, interior and exterior plastering, non-skid tile installation and scratch coating for tile installation.

c) FORMWORKS

d) OTHER CONCRETE WORKS — trenches, platform for transformers, ger sets and aircons

e) METAL WORKS — trench grating, I-beam separator, manhole cover, ladder rungs of tanks, stair railings and stair nosing

f) MISCELLANEOUS WORKS

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[4] *Id.* at 109-124.

[5] *Id.* at 109.

– installation of Doors and Jambs (metal and wood)
– Lintel Beams/Stiffener Columns
– Installation of Hardwares and accessories
– Window and Door Openings

g) MISCELLANEOUS ITEMS — column guard, wheel guard, waterstop, vapor barrier, incidental embeds, floor hardener, dustproofer, sealant, soil treatment, elevator block-outs for call button, block-outs for electro-mechanical works and concrete landing sills.

h) ROOFING WORKS — Steel Trusses/Purlins, Rib Type pre-painted roofing sheets, Insulation

i) Garbage Chutes

2.3. The work of the CONTRACTOR shall include but not be limited to, preparing the bill of materials, canvassing of prices, requisition of materials for purchase by OWNER, following up of orders, checking the quality and quantity of the materials within the premises of the construction site and returning defective materials.[6]

Respondent further agreed that the construction work would be completed within 330 calendar days from "Day 1," upon the Construction Manager's confirmation.[7] Petitioner initially considered February 20, 1997 as "Day 1" of the project. However, when respondent entered the project site, it could not start work due to the on-going bulk excavation by another contractor. Respondent thus asked petitioner to move "Day 1" to a later date, when the bulk excavation contractor would have completely turned over the site.[8]

After a series of correspondence between petitioner and respondent, February 25, 1997 was proposed as "Day 1." Accordingly, respondent's completion date of the project was fixed on January 21, 1998.[9]

Prior to and during the construction period, changes in circumstances arose, prompting the parties to make adjustments

[6] *Id.* at 111.

[7] *Id.* at 68.

[8] *Id.*

[9] *Id.* at 69.

in the initial terms of their contract. The following pertinent changes were mutually agreed upon by the parties:

First, as the bulk excavation contractor refused to return to the project site, petitioner directed respondent to continue the excavation work;[10]

Second, in addition to respondent's scope of work, it was made to perform side trimmings.

Third, petitioner directed respondent to reduce the monthly target accomplishment to ₱1 million worth of work and up to one (1) floor only.[11]

Fourth, the following were deleted from respondent's scope of work: a) Masonry works and all related items from 6th floor to roof deck; b) All exterior masonry works from 4th floor to roof deck; and c) Garbage chute.[12]

Fifth, as a consequence of the deletion of the above works, the contract price was reduced to ₱62,828,826.53.[13]

Sixth, the parties agreed: that the items of work or any part thereof not completed by the respondent as of February 28, 1999 should be deleted from its contract, except demobilization; the punch list items under respondent's scope of responsibility not yet made good/ corrected as of the same period shall be done by others at a fixed cost to be agreed upon by all concerned; and respondent should be compensated for the cost of utilities it installed but were still needed by other contractors to complete their work.[14]

Lastly, they agreed that a joint quantification should be done to establish the bottom line figures as to what were to be deleted from the respondent's contract and the cost of completing the punch list items which were deductible from respondent's receivables.[15]

In view of the limitation on the target accomplishment to ₱1 million worth of work per month, respondent asked that the

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

[11] *Id.* at 70-71.

[12] *Id.* at 71-72.

[13] *Id.* at 809.

[14] *Id.* at 72-73.

[15] *Id.* at 73.

topping-off be moved to February 1999. Respondent likewise requested a price adjustment with respect to overhead and equipment expenses and legislated additional labor cost. These requests were not, however, acted upon by petitioner.[16]

After the completion of the side trimmings and excavation of the building's foundation, respondent demanded the payment of ₱2,248,507.70 and ₱1,805,225.90, respectively. Instead of paying the amount, petitioner agreed with the respondent on a negotiated amount of ₱900,000.00 for side trimmings.[17] However, respondent's claim for foundation excavation was not acted upon.[18] During the construction period, petitioner granted, on separate occasions, respondent's requests for payroll and material accommodations.[19]

On March 13, 1999, respondent submitted its final billing, amounting to ₱4,442,430.90 representing its work accomplishment and retention, less all deductions. On March 23, 1999, a punch list was drawn as a result of the joint inspection undertaken by the parties. Petitioner, on the other hand, refused to issue a certificate of completion. It, instead, sent a letter to respondent informing the latter that it was already in default.[20]

On September 14, 1999, respondent was constrained to file a Request for Adjudication[21] with the CIAC. Respondent specifically prayed, thus:

WHEREFORE, premises considered, the Claimant-Contractor prays that this Honorable Commission render judgment against Respondent-Owner EMPIRE EAST LAND HOLDINGS, INC., ordering said Respondents to pay the Claimant the amount of PhP22,770,976.66 plus costs of suit, broken down as follows:

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[16] *Id.* at 71.

[17] *Id.* at 810.

[18] *Id.* at 69-70.

[19] *Id.* at 809.

[20] *Id.* at 73-74.

[21] *Id.* at 101-108.

a. PhP4,442,430.90 as unpaid amount from the contract price;
b. PhP3,153,733.60 as the amount remaining unpaid for additional works;
c. PhP13,976,427.00 as overhead expenses; and
d. PhP1,198,385.16 as additional costs due to wage escalation;

Other reliefs equitable under the premises are also prayed for.[22]

On May 16, 2000, the CIAC rendered a decision[23] in favor of the respondent, disposing, as follows:

WHEREFORE, judgment is hereby rendered and AWARD of monetary claims is hereby made as follows:

FOR THE CLAIMANT:

1.	Retention Money		₱4,502,886.64
	Unpaid Billings	(₱1,607,627.65)	
	Retention Money	(6,110,514.29)	
2.	Additional Work: Excavation for Foundations		1,805,225.90
3.	Overhead Expenses		1,397,642.70
4.	Labor Costs Escalation		308,226.57
	Total due the Claimant		₱8,013,981.81

FOR THE RESPONDENT:

1.	Punch List Items	₱248,350.00
	Total due the Respondent	₱248,350.00

All other claims and counterclaims are dismissed.

OFFSETTING the lesser amount due from Claimant with the bigger amount from the Respondent, EMPIRE EAST LAND HOLDINGS, INC. is hereby ordered to pay CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC. the net amount of SEVEN MILLION SEVEN HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED THIRTY-ONE AND 81/100 (₱7,765,631.81) with 6% legal interest from the time the request for adjudication was filed with the CIAC on September 14, 1999 up to the time this Decision becomes final and executory.

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[22] *Id.* at 107.

[23] *Id.* at 797-817.

Thereafter, interest at the rate of 12% per annum shall accrue on the final judgment until it is fully paid.

The arbitration fees and expenses shall be paid on a pro rata basis as initially shared by the parties.

SO ORDERED.[24]

As to petitioner's counterclaim, the CIAC denied those which referred to masonry and other works that it took over, considering that they were formally deleted from respondent's scope of work, which in turn caused the reduction of their total contract price.[25] Petitioner's claim for liquidated damages was likewise found unmeritorious because it allowed respondent to complete the works despite knowledge that the latter was already in default.[26] On the other hand, as the punch list was drawn after the joint inspection by the parties, CIAC found for the petitioner and thus awarded a total amount of ₱248,350.00.[27]

Aggrieved, petitioner elevated the matter to the CA *via* a petition for review under Rule 43 of the Rules of Court. On November 3, 2004, the CA affirmed the CIAC's findings of fact and conclusions of law with a slight modification, and ruled:

WHEREFORE, the Decision, dated 16 May 2000, of the Construction Industry Arbitration Commission Arbitral Tribunal is hereby AFFIRMED WITH MODIFICATION in that CIAC's award on Labor Cost Escalation is hereby DELETED for lack of factual basis and, consequently, for lack of cause of action and CIAC's award on Additional Work for Foundation Excavation is hereby equitably REDUCED to ₱980,376.34. All other awards, as well as the rates of interest, are hereby AFFIRMED.

Accordingly, the total amount due to CICG is ₱6,880,905.68. While EELH is entitled ₱248,350.00. Offsetting the award of EELH from the amount due to CICG, EELH is hereby ORDERED to pay CICG the total amount of SIX MILLION SIX HUNDRED THIRTY-

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[24] *Id.* at 816-817.

[25] *Id.* at 814-815.

[26] *Id.* at 815-816.

[27] *Id.* at 815.

TWO THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS (₱6,632,555.00). No costs at this instance.

SO ORDERED.[28]

In deleting respondent's claim for labor cost escalation and reducing its claim for the cost of the excavation of foundation, the appellate court said that respondent failed to show that it in fact paid said wage increase pursuant to the New Wage Order,[29] while the reduction of the cost of foundation excavation was the result of the reduction of its cost per cubic meter.[30]

Hence, the present petition, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ORDERED THE RELEASE OF RETENTION MONEY IN FAVOR OF CICG.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED THE CLAIM OF CICG FOR THE EXCAVATION OF FOUNDATION.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AFFIRMED CIAC'S AWARD FOR THE PAYMENT OF ALLEGED OVERHEAD EXPENSES.

IV.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DENIED EMPIRE EAST'S CLAIM FOR MASONRY AND OTHER WORKS, LIQUIDATED DAMAGES, AND COST OF MONEY FOR PAYROLL ASSISTANCE AND MATERIALS ACCOMMODATION.[31]

The petition is partly meritorious.

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[28] *Id.* at 93.

[29] *Id.* at 85-90.

[30] *Id.* at 83.

[31] *Id.* at 990.

On the Release of Retention Money

Petitioner contends that both the CIAC and the CA erred in ordering the release of the retention money despite respondent's failure to comply with the conditions for its release as set forth in the contract.

We find for the petitioner.

In the construction industry, the ten percent (10%) retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any becomes necessary.[32]

The construction contract gave petitioner the right to retain 10% of each progress payment until completion and acceptance of all works.[33] Undoubtedly, as will be discussed hereunder, respondent complied fully with its obligations, save only those items of work which were mutually deleted by the parties from its scope of work. However, apart from the completion and acceptance of all works, the following requisites were set as pre-conditions for the release of the retention money:

a) Contractor's Sworn Statement showing that all taxes due from the CONTRACTOR, and all obligations on materials used and labor employed in connection with this contract have been duly paid;

b) Guarantee Bond to answer for faulty and/or defective materials or workmanship as stated in Article IX Section 9.3 of this Contract;

c) Original and signed and sealed Three (3) sets of prints of "As Built" drawings.[34]

The CA affirmed the CIAC's decision to order the release of the retention money despite respondent's failure to establish

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[32] *H.L. Construction, Inc. v. Marina Properties Corporation*, 466 Phil. 182, 199-200 (2004).

[33] *Rollo*, p. 112.

[34] *Id.* at 112, 114.

the fulfillment of the aforementioned conditions, as both tribunals merely focused on the non-issuance of the certificate of completion, which, according to respondent, was a pre-requisite to the issuance of a guarantee bond. The CA concluded that the conditions were deemed fulfilled because the creditor voluntarily prevented their fulfillment.

To this, we cannot agree.

The record of the case is bereft of any evidence to show that conditions (a) and (c) were complied with. Petitioner categorically stated in all its pleadings that they were not. Surprisingly, respondent did not squarely argue this point. It relied solely on petitioner's failure to issue the certificate of completion, which prevented the acquisition of a guarantee bond and thus resulted in the non-release of the retention money. While it is true that respondent was entitled to a certificate of completion as the issuance thereof was just a ministerial duty of petitioner considering that the project had already been completed, the certificate was not the only condition for said release. It was simply a pre-requisite for the issuance of the guarantee bond. And there was no showing that the absence of the certificate of completion was the only reason why no guarantee bond was issued.

If we were to apply the civil law rule of constructive fulfillment — the condition shall be deemed fulfilled if the creditor voluntarily prevented its fulfillment — then the submission of a guarantee bond may be deemed to have been complied with. But we cannot apply the rule to conditions (a) and (c), which remain as unfulfilled conditions-precedent. Since no proof was adduced that these two conditions were complied with, petitioner's obligation to release the retention money had not, as yet, arisen. We would like to emphasize, though, that this is without prejudice to respondent's compliance with the unfulfilled conditions, after which, release of the retention money must, perforce, follow.

On Respondent's Right to Additional Overhead Costs

Respondent claimed ₱13,976,427.00 as additional overhead expenses brought about by the delay in the completion of the

project due to petitioner's own acts. The CIAC, however, awarded only a nominal amount which is 10% of respondent's claim because of its failure to present supporting documents to prove such additional expenses. The arbitral tribunal observed that respondent only presented its own computation without any other document to substantiate its claim. The CA, in turn, affirmed the CIAC findings, ratiocinating that petitioner's failure to present countervailing evidence was an implied admission on its part that the computation made by respondent was correct.

We beg to differ.

It is undisputed that the only piece of evidence presented by respondent in support of its claim for additional overhead cost was its own computation of the said expenses. It failed to adduce actual receipts, invoices, contracts and similar documents. To be sure, respondent's claim for overhead cost may be classified as a claim for actual damages. Actual damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. They indicate such losses as are actually sustained and are susceptible of measurement. As such, they must be proven with a reasonable degree of certainty.[35]

This is not the first time that a contractor's claim for additional overhead costs was denied because of insufficiency or absence of evidence to support the same. In *Filipinas (Pre Fab Bldg.) Systems, Inc. v. MRT Development Corporation*,[36] we denied FSI's claim because only "summaries," and not actual receipts, were presented during the hearing. Similarly, in the instant case, respondent, by presenting only its own computation to substantiate its claim, is not entitled even to the reduced amount of ₱1,397,642.70 which is 10% of its original claim. Instead, we altogether deny its prayer for additional overhead costs.

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[35] *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation,* G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 639-640.

[36] G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609.

On Respondent's Right to the Cost of Foundation Excavation

As to respondent's entitlement to the cost of excavation of foundation, we find no cogent reason to disturb the CIAC's conclusion, as modified by the CA.

Side trimmings and the excavation of foundation were not included in respondent's original scope of work. They were, however, undertaken by the respondent upon the directive of petitioner, due to the previous contractor's refusal to resume its excavation work. These works, therefore, constitute an additional claim of respondent over and above the original contract price. A confirmation of these works had, in fact, been given by petitioner through Change Order Nos. 3[37] and 4[38] where it agreed to pay ₱250,000.00 and ₱650,000.00, respectively. This ₱900,000.00 negotiated amount referred specifically to side trimmings and hauling out of adobe soil. It is unfortunate, though, that the parties failed to arrive at a settlement as to respondent's claim for the cost of excavation of foundation.

The additional works having been undertaken by respondent, and the fact of non-payment thereof having been established, we find no reason to disturb the CIAC's conclusion that respondent is entitled to its claim for the cost of excavation of foundation. As to the propriety of the award, both the CIAC and the CA were in a better position to compute the same considering that said issue is factual in nature. Significantly, jurisprudence teaches that mathematical computations, as well as the propriety of arbitral awards, are factual determinations[39] which are better examined by the lower courts as trier of facts. Thus, we affirm the award of ₱980,376.34 for foundation excavation.

On Petitioner's Counterclaim for the Cost of Unfinished Works

During the construction period, the parties mutually agreed that some items of work be deleted from respondent's scope of

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[37] *Rollo*, p. 136.

[38] *Id.* at 137.

[39] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corporation*, G.R. Nos. 169408 & 170144, April 30, 2008.

work. Specifically, as claimed by respondent, the following were deleted: a) masonry works and all related items from the 6th floor to the roof deck; b) all exterior masonry works from the 4th floor to the roof deck; and c) the garbage chute. This deletion was, however, denied by petitioner. It, instead, claimed that the only modification it approved was the reduction by three floors of the total number of floors to be constructed by respondent.[40]

After a thorough review of the documents presented by both parties, both the CIAC and the CA concluded that the unfinished works, *i.e.*, masonry works, were actually recognized and accepted by petitioner. It thus agreed to take over, through its new contractor, the balance of work. The only consequence of such acceptance was the deduction of the value of the unfinished works from the total contract price.[41] This was the reason why the contract price was reduced from ₱84 million to ₱62,828,826.53. The deletion was, likewise, confirmed by respondent in a letter dated August 21, 1998.[42]

Applying Article 1235[43] of the Civil Code, petitioner's act exempted respondent from liability for the unfinished works. A person entering into a contract has a right to insist on its performance in all particulars, according to its meaning and spirit. But if he chooses to waive any of the terms introduced for his own benefit, he may do so.[44] When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

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[40] *Rollo*, p. 803.

[41] *Id.* at 156.

[42] *Id.* at 153.

[43] Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

[44] *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* BY ARTURO M. TOLENTINO, Volume Four, 1991 Ed., p. 278.

In the instant case, petitioner was aware of the unfinished work of respondent; yet, it did not raise any objection or protest. It, instead, voluntarily hired another contractor to perform the unfinished work, and opted to reduce the contract price. By removing from the contract price the value of the works deleted, it is as if said items were not included in the original terms, in the first place. Thus, as correctly concluded by the CIAC, and as affirmed by the CA, petitioner is not entitled to reimbursement from respondent for the expenses it incurred to complete the unfinished works.

On Petitioner's Counterclaim for Liquidated Damages

In addition to its claim for the cost of masonry and other works, petitioner demanded the payment of liquidated damages on the ground that respondent was in default in the performance of its obligation.

Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, they are in the nature of penalties. They are attached to the obligation in order to ensure performance.[45] As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation.

Thus, the resolution of the issue of petitioner's entitlement to liquidated damages hinges on whether respondent was in default in the performance of its obligation.

The completion date of the construction project was initially fixed on January 21, 1998. However, due to causes beyond the control of respondent, the latter failed to perform its obligation as scheduled. The CIAC[46] and the CA enumerated the causes of the delay, *viz.*, the delayed issuance of building permit;[47]

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[45] *H.L. Construction, Inc. v. Marina Properties Corporation, supra* note 32, at 205.

[46] *Rollo,* pp. 811-814.

[47] It was legally impossible for respondent to commence the project on February 25, 1997 because the Building Permit was only issued on March 21, 1997.

additional work undertaken by respondent, *i.e.*, bulk excavation and side trimmings;[48] delayed payment of progress billings;[49] delayed delivery of owner-supplied construction materials;[50] and limitation of monthly accomplishment.[51] All these causes of respondent's failure to complete the project on time were attributable to petitioner's fault.

Still, petitioner contends that even at the start and for the entire duration of the construction, respondent was guilty of delay due to insufficient manpower and lack of technical know-how.[52] Yet, petitioner allowed respondent to proceed with the project; thus, petitioner cannot now be permitted to raise anew respondent's alleged delay. More importantly, respondent is not guilty of breach of the obligation; hence, it cannot be held liable for liquidated damages.

On Petitioner's Counterclaim for the Cost of Payroll Assistance and Materials Accommodation

Finally, as to petitioner's counterclaim for payroll assistance and materials accommodation, we quote with approval the CA's observation in this wise:

> [W]ith respect to EELH's [petitioner's] claim for payroll and material assistance, a perusal of CIAC's questioned Decision reveals that these were already taken into consideration and, were in fact, deducted from CICG's [respondent's] retention money itemized as unpaid billings amounting to ₱1,607,627.65.

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[48] Petitioner directed the respondent to undertake side trimmings and excavation of foundation as the previous bulk excavation contractor refused to return to the project site. Such works were therefore undertaken in addition to respondent's initial scope of work.

[49] Petitioner's failure to settle on time respondent's progress billing contributed to respondent's delay in the performance of the obligation.

[50] Due to the delay in the delivery of owner-supplied materials, respondent underwent manpower rotation.

[51] Petitioner instructed respondent to limit its monthly accomplishment to ₱1 million worth of work and up to one (1) floor only.

[52] *Rollo*, p. 1016.

On page 9 of CIAC's Decision, the arbitral tribunal found that the total amount of payroll accommodation advanced by EELH [petitioner] for (*sic*) CICG [respondent] is ₱10,044,966.16, while the material assistance advanced by EELH [petitioner] is ₱2,837,645.26. These amounts were added together with other items and were deducted from the reduced contract price. Hence, as can be gleaned from page 13 of the CIAC's Decision, EELH's [petitioner's] overpayment amounting to ₱1,607,627.65 already included EELH's [petitioner's] payroll accommodation and material accommodations.[53]

As can be gleaned from the appealed CA decision, the appellate court had reviewed the case based on the petition and annexes, and weighed them against the Comment of respondent and the decision of the arbitral tribunal to arrive at the conclusion that the latter decision was based on substantial evidence. In administrative or quasi-judicial bodies like the CIAC, a fact may be established if supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[54]

It is well established that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective evidence of the parties.[55] To be sure, findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court, save only in clear exceptional cases.[56]

In view of the foregoing, after deducting from the final contract price the retention money (that is yet to be released), the payments

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

[54] *Megaworld Globus Asia, Inc. v. DSM Construction Development Corporation*, 468 Phil. 305, 314 (2004).

[55] *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*, *supra* note 35, at 638-639; *Security Bank and Trust Company v. Gan*, G.R. No. 150464, June 27, 2006, 493 SCRA 239, 242.

[56] *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, August 22, 2005, 467 SCRA 500, 543.

as well as the payroll and material accommodations made by the petitioner, there was an overpayment to respondent in the total amount of ₱1,607,627.65. From said amount shall be deducted ₱980,376.34 due the respondent for the cost of foundation excavation. On the other hand, as held by the CIAC and affirmed by the CA, petitioner is entitled to its claim for punch list items amounting to ₱248,350.00.

Considering that the conditions set forth in the contract have not yet been complied with, the release of the retention money shall be held in abeyance. Thus, respondent is liable to petitioner for the payment of ₱875,601.31, which is the difference between the overpayment and the cost of foundation excavation, plus the cost of punch list items.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals dated November 3, 2004 and its Resolution dated May 10, 2005 in CA-G.R. SP No. 58980, are *MODIFIED* by deleting the award of additional overhead cost amounting to ₱1,397,642.70.

The petitioner is directed to issue to respondent the required certificate of completion in order to enable the latter to obtain the corresponding guarantee bond. In view of the non-fulfillment of the conditions-precedent, the release of the retention money is hereby held in abeyance. Thus, respondent is ordered to pay the petitioner ₱875,601.31 subject to the return of the amount when respondent shall have complied with the conditions aforesaid.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Velasco, Jr.,*[*] *JJ.,* concur.

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[*] Additional member replacing Associate Justice Ruben T. Reyes per Raffle dated September 8, 2008.

THIRD DIVISION

[G.R. No. 168561. September 26, 2008]

TACLOBAN II NEIGHBORHOOD ASSOCIATION, INC., *petitioner, vs.* **OFFICE OF THE PRESIDENT, ERICKSON M. MALIG, ROLANDO V. MIRANDA, RENEDEL B. MENDOZA, DANTE R. MANALAYSAY, ROMULO R. DEL ROSARIO, JR., and BAYANI M. TORRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED, NOT DISPUTED. — We are inclined to believe that petitioner's Motion for Reconsideration of the 10 December 2003 Resolution of the OP was filed on time. According to the Certification issued by the Postmaster, petitioner's Motion for Reconsideration was sent by registered mail on **22 January 2004** — not 27 January 2004, as erroneously found by the OP in its Order dated 13 February 2004 — only 13 days after petitioner's receipt of a copy of the 10 December 2003 Resolution of the OP on 9 January 2004, and well-within the reglementary period for the filing of a motion for reconsideration thereof. We accordingly give credence to the Postmaster's Certification, in light of the legal presumption, based on wisdom and experience, that official duty has been regularly performed. The Postmaster's Certification is sufficient evidence of the fact of mailing. This Certification is also fortified by the attached official receipt evidencing the payment of the appropriate fee for the issuance of the said Certification by the Postmaster, as required by Memorandum Circular 2000-17 dated 18 February 2000 of the Department of Transportation and Communication. The burden of proving the irregularity, if any, in the official conduct of the Postmaster falls on the party asserting the same. Private respondents failed to discharge such burden in this case.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ORDER NO. 87 (SERIES OF 1990); PROCEDURE FOR THE PERFECTION OF AN APPEAL FROM THE

DECISION/ORDER OF THE DENR REGIONAL DIRECTOR TO THE DENR SECRETARY, APPLIED. — Administrative Order No. 87, series of 1990, provides for the procedure for the perfection of appeals from the decisions/ orders of the DENR Regional Offices to the DENR Secretary. It states: Sec. 1. *Perfection of Appeals*. — a) Unless otherwise provided by law or executive order, appeals from the decisions/ orders of the DENR Regional Offices shall be perfected within fifteen (15) days after receipt of a copy of the decision/order complained of by the party adversely affected, by filing with the Regional Office which adjudicated the case a notice of appeal, **serving copies thereof upon the prevailing party** and the Office of the Secretary, and paying the required fees. Very obviously, as mandated by the above provision, it is the bounden duty of the private respondents to furnish the petitioner with copies of their appeal to the DENR Secretary. The burden is upon them to show that they had complied with the legal duty. They failed to discharge said burden. It thus appear that petitioner was not a participant in the appeal interposed by private respondents. Such non-participation was never petitioner's choice as the record is lacking in any indication that petitioner was notified of private respondents' appeal. Neither was petitioner required to comment thereon. Even then, when petitioner was able to get a copy of the order of 8 January 2001, on 13 July 2001, it filed a petition for review with the OP on 24 July 2001, or 11 days from receipt of the copy of the order on 13 July 2001.

3. ID.; ID.; ID.; ID.; AN APPEAL FROM DENR REGIONAL DIRECTOR'S DECISION TO THE DENR SECRETARY MAY NOT BE DISMISSED ON PROCEDURAL GROUND IN VIEW OF PUBLIC INTEREST AND SUBSTANTIAL JUSTICE; REASONS, ENUMERATED. — Assuming, without admitting, that there were technical procedural lapses committed by the petitioner, public interest and the interest of substantial justice require a resolution on the merits of the case instead of a mere dismissal thereof based on alleged technical grounds. The following reasons led us towards this direction: (1) It must be emphasized that DENR-RED Serrano's findings are in direct conflict with those of DENR Secretary Cerilles: while the former ruled in favor of petitioner, finding that the free patents of private respondents were issued through fraud and misrepresentation, the latter found in favor of private

respondents, upholding their free patents. Hence, there is apparent need to review the arguments raised and evidence submitted by the parties. (2) We also take note that private respondents themselves filed a case for Unlawful Detainer against the petitioner before the Municipal Trial Court (MTC) of Mariveles, Bulacan, docketed as Civil Case No. 97-717. In its Consolidated Decision dated 27 July 1998, the MTC decided the case in petitioner's favor, awarding to it the possession of the subject property. This MTC decision had already attained finality and the corresponding writ of execution was already issued for the satisfaction of the judgment. (3) There are important multiple and factual issues to be resolved, which may include but not necessarily be limited to whether petitioner, and not private respondents, are in possession of the subject property; whether petitioner applied for free patents over the subject property ahead of private respondents; whether petitioner, rather than private respondents, has a better right to the free patents on the subject property; whether the free patents in the name of private respondents were issued based on fraud and misrepresentation of facts; whether private respondents' free patents may be cancelled; and whether any of the apparent conflicting resolutions of the different courts in various cases should bind or affect the ruling in this case. (4) Most importantly, the present controversy involved petitioner's sacrosanct right to property, which is protected by the Constitution. No person should be deprived of life, liberty, or property without due process of law.

4. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; APPLICATION OF THE RULES OF PROCEDURE, RELAXED. — While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of the dockets of the courts is a laudable objective, it nevertheless must not be met at the expense of substantial justice. The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the

ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases to which we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant is given the full opportunity for a just and proper disposition of his cause. The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, we have consistently held that rules must not be applied so rigidly as to override substantial justice. What is more, rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies. Thus, technical rules of procedure imposed in judicial proceedings are unavailing in cases before administrative bodies. Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Rules of procedure are not to be applied in a very rigid and technical manner, as they are used only to hold secure and not to override substantial justice. ALL TOLD, the OP and, consequently, the Court of Appeals should have looked beyond the alleged technicalities to open the way for the resolution of the substantive issues in the instant case. There was grave abuse of discretion on the part of the OP for dismissing petitioner's appeal on illusory technical grounds even in the light of the meritorious circumstances which should have compelled it to look beyond procedural rules. The Court of Appeals, thus, erred in dismissing petitioner's Petition for *Certiorari*. By dismissing the said Petition, therefore, affirming the dismissal by the OP of petitioner's appeal on technical grounds, the Court of Appeals absolutely foreclosed the resolution of all the substantive issues petitioner was repeatedly attempting to raise before the proper forum. Indubitably, justice would have been better served if the Court of Appeals directed the OP to resolve petitioner's appeal on the merits.

APPEARANCES OF COUNSEL

Barbers Molina & Molina for petitioner.
Victor P. De Dios, Jr. for private respondents.

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 Rules of Court assailing the Decision[1] dated 21 February 2005 and Resolution[2] dated 10 June 2005 of the Court of Appeals in CA-G.R. SP No. 83556. In its assailed Decision, the Court of Appeals dismissed the Petition[3] for *Certiorari* under Rule 65 of the Rules of Court filed by the petitioner Tacloban II Neighborhood Association, Inc. after finding that the Office of the President (OP) did not commit grave abuse of discretion when it denied petitioner's Motion for Reconsideration for having been filed out of time. In its assailed Resolution, the appellate court denied petitioner's Motion for Reconsideration.

At the crux of the present controversy is Lot No. 404, Cad 245, Mariveles Cadastre, with an area of 15 hectares, located at Lucanin, Mariveles, Bataan (subject property). Sometime in 1996, private respondents Erickson M. Malig, Rolando B. Miranda, Renedel B. Mendoza, Dante R. Manalaysay, Romulo R. del Rosario, Jr. and Bayani Torres were issued Free Patents No. 030807-96-1257, No. 030807-96-1260, No. 030807-96-1259, No. 030807-96-1261, No. 030807-96-1258 and No. 030807-96-1256, respectively, with the corresponding Original Certificates of Title (OCTs), over said lot.[4]

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[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo, concurring. *Rollo*, pp. 28-37.

[2] *Rollo*, p. 38.

[3] CA *rollo*, p. 2.

[4] *Id.* at 26-27.

On 24 November 1996 and 16 December 1996, protests[5] against the aforementioned free patents issued to private respondents were filed before the Department of Environment and Natural Resources Regional Office (DENR-RO) No. III by petitioner, represented by its President Rodolfo Limbawan and Sofronio Dilao. According to petitioner, its members are the actual occupants of the subject lot since 1970. Its members had filed their Free Patent applications within the period of 17 February to March 1993 with the Community Environment and Natural Resources Office (CENRO) in Bagac, Bataan, which were not acted upon by said office. They would later on discover that free patents to the subject property were already issued in the names of private respondents, through fraud and misrepresentation, with the connivance of some DENR personnel in Bagac, Bataan.

In their Answer to petitioner's protests, private respondents denied the allegations of petitioner. They asserted that their free patents on the subject property were regularly issued. They derived their rights to the subject property from its original claimant, the late Saturno Ramirez, through a Waiver of Rights[6] executed in their favor by the heirs of the latter, represented by Jose Ramirez. Saturno Ramirez, through his tenant, Sofronio Dilao, had long been in possession and occupation of the subject property, as recognized by the Order dated 14 March 1983 of the Director of Lands.[7] Saturno Ramirez had even declared said property in his name under Tax Declaration No. 7976.[8] The preferential right of the heirs of Saturno Ramirez to apply for free patent on the subject property was sustained in the Judgment dated 26 May 1989 rendered by the Regional Trial

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[5] *Id.* at 51.

[6] Annex D, *id.* at 26-27.

[7] Docketed as B.L. Claim No. 2589(N) entitled "*Heirs of Amado Ynaga and Heirs of Saturnino Ramirez v. Eduardo Mallari.*" It was held therein that Saturno Ramirez thru their tenant had been in continuous possession of the land in dispute. (CA *rollo*, p. 90.)

[8] CA *rollo*, p. 90.

Court (RTC), Branch I, Balanga, Bataan.[9] Petitioner's members are mere squatters and tenants on the land, so their claim thereon cannot ripen into a valid claim of ownership.

Acting on the Protests, an investigation was conducted by the DENR-RO personnel, which included an ocular inspection of the subject property. At the end thereof, the parties were required to submit their position papers. The DENR-RO personnel then submitted their Report dated 21 April 1997, in which DENR Regional Executive Director (DENR-RED) Ricardo V. Serrano (Serrano) based his undated letter-decision.[10] DENR-RED Serrano found that the free patents on the subject property were issued to private respondents through fraud and misrepresentation; that the free patents were not processed in accordance with the procedure provided under the Public Land Act, and that petitioner's members were the actual occupants of the disputed land. DENR-RED Serrano concluded in his letter-decision that:

> Based on the facts above-narrated it was established beyond scintilla of doubt that, indeed, [herein private respondents] committed fraud and misrepresentation of facts which led this Office to issue the free patents in their favor by stating in their applications that the subject land is not being claimed or occupied by any other person, when in truth and in fact, the same is presently being occupied by the [members of herein petitioner]. Likewise, the deceitful acts perpetrated by the [private respondents] in connivance with the DENR employees is a violation of Section 16 of the Public Land Act and should, therefore, warrant the cancellation of the patents issued to the former.[11]

DENR-RED Serrano accordingly recommended the cancellation of the subject free patents by the Office of the Solicitor General (OSG), thus:

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[9] Civil Case 3634, in which Saturno Ramirez was an Intervenor and the RTC of Balanga Branch 1 awarded the property, in this case, Lot 404, to Saturno Ramirez (CA *rollo*, p. 90).

[10] CA *rollo*, p. 65. Received by the OSG on 23 July 1997.

[11] *Id.* at 66-67.

> In view of the foregoing and pursuant to Section 91 of C.A. 141, it is respectfully recommended that an action for reversion be instituted leading to the cancellation of free patents and the corresponding original certificate of titles issued and registered to the [herein private respondents]. Thus, we are forwarding the complete records of the case consisting of 277 pages together with the draft of the complaint for your review and approval.[12]

The OSG received a copy of DENR-RED Serrano's letter-decision, together with the records of the case, on 23 July 1997.

Private respondents appealed DENR-RED Serrano's letter-decision to the Office of the DENR Secretary. However, it appears that petitioner was not furnished a copy of said appeal, nor was it notified of any re-investigation which was conducted by the Office of the DENR Secretary in connection therewith, much less required to file any comment, answer or opposition thereto. Apparently, petitioner only learned of the appeal when it followed up with the OSG the status of the recommendation for cancellation and reversion of private respondents' free patents made in the letter-decision of DENR-RED Serrano. At the OSG, petitioner saw a letter dated 4 February 1999, written by Atty. S. F. Rodriguez, Director, Legal Service of the DENR Central Office, requesting the OSG to forward the records of the case to the DENR so that the latter could act on the appeal. Acting on Atty. Rodriguez's request, Assistant Solicitor General Nestor J. Ballacillo forwarded the case records to the DENR Central Office, appropriately covered by a transmittal letter dated 9 February 1999.

Based on the claim that the appeal was filed before the Office of the DENR Secretary only several months after receipt by private respondents of a copy of DENR-RED Serrano's letter-decision and was, thus, filed beyond the reglementary period of 15 days for appeal, petitioner's counsel wrote Atty. Rodriguez on 25 August 2000,[13] imploring the DENR to "uncover and investigate the person behind the move to resurrect the instant

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[12] *Id.* at 67.

[13] *Id.* at 85.

case which had long acquired the stamp of finality," and requested that "the records of the case be returned to the Office of the Solicitor General." There is nothing on record, however, to indicate when private respondents actually received a notice of the appealed letter-decision.

On 13 July 2001, petitioner's counsel went to the Legal Service Division of the DENR Central Office to inquire about the status of private respondents' appeal. To his surprise, he was informed by the personnel therein that an Order[14] reversing the findings of DENR-RED Serrano was issued by DENR Secretary Antonio H. Cerilles (Cerilles) as early as 8 January 2001, the dispositive portion of which states:

> WHEREFORE, in the light of all the foregoing, the undated letter of the then Regional Executive Director Ricardo B. Serrano, recommending for the cancellation of the free patents of the [herein private respondents] is hereby REVERSED and the Free Patents of the [private respondents] are hereby AFFIRMED.[15]

Petitioner was only able to acquire a copy of the afore-quoted Order of DENR Secretary Cerilles on the day of its counsel's visit to the DENR Central Office on 13 July 2001.[16] On 24 July 2001, or 11 days from receipt of a copy of said Order, petitioner filed a Petition for Review[17] with the Office of the President (OP).

On 10 December 2003, the OP issued a Resolution dismissing petitioner's appeal and affirming the Order dated 8 January 2001 of DENR Secretary Cerilles, *viz*:

> This refers to the appeal of Tacloban II Neighborhood Association, Inc. and Sofronio Dilao, thru counsel, from the order of the Secretary of Environment and Natural Resources, dated January 8, 2001, reversing the undated letter-decision of then DENR Regional

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[14] *Id*. at 87.

[15] *Id*. at 93.

[16] *Id*. at 94.

[17] *Id*. at 97.

Executive Director Ricardo V. Serrano, which recommended the cancellation of the Free Patent Applications of Erickson M. Malig, Rolando B. Miranda, Renedel B. Mendoza, Dante R. Manalaysay, Romulo R. Del Rosario, Jr. and Bayani Torres over Lot No. 404, Cad. 245, Mariveles Cadastre, located at Lucanin, Mariveles, Bataan, and giving due course thereto instead.

After a careful and thorough evaluation and study of the records of this case, this Office hereby adopts by reference the findings of facts and conclusions of law contained in the order appealed from.

A copy of the DENR order dated January 8, 2001 is hereto attached as Annex "A" and made an integral part hereof.

Apart therefrom, this Office notes with affirmation the 1st Indorsement, dated August 7, 2001, of the Director, DENR Legal Service, Quezon City, that the aforementioned assailed order may now be considered final and executory, in view of the certification dated July 23, 2001, of the Chief, Records Management and Documentation Division, DENR, that, based on the records, there is no Notice of Appeal/Motion for Reconsideration filed by the parties concerned relative to said DENR order.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the order appealed from AFFIRMED.[18]

The Motion for Reconsideration[19] filed by petitioner failed to convince the OP to reverse its earlier Resolution. In an Order dated 13 February 2004, the OP denied petitioner's motion, reasoning that:

After a careful perusal of the instant motion, this Office finds no fact or circumstance on which to premise the reversal or modification of subject OP Resolution. [Herein petitioner's members'] naked assertion that they officially received a copy of the assailed DENR order only on July 13, 2001 and that, therefore, their appeal to this Office was filed on time cannot stand against the documented fact of record consisting of the 1st Indorsement, dated August 7, 2001 of the Director, DENR Legal Service, Quezon City, that the aforementioned DENR order may now be considered final and

[18] *Id.* at 18.

[19] *Id.* at 115.

executory on account of the Certification, dated July 23, 2001, of the Chief, DENR Records Management and Documentation Division, that based on the records, there is no Notice of Appeal/Motion for Reconsideration filed by [petitioner's members] *vis-à-vis* said DENR order.

Apart therefrom, the present motion was inopportunely filed and, hence, beyond our jurisdictional competence to pass upon, [petitioner's members'] counsel having admitted therein that he received a copy of OP Resolution dated December 10, 2003 on January 9, 2004 and yet filed the motion at hand only on January 27, 2004 or beyond the 15-day reglementary period for filing the same. Thus, Section 7 of Administrative Order No. 18, dated February 12, 1987, entitled "PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES," provides:

> "SEC. 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

WHEREFORE, premises considered, the instant motion is hereby DENIED.[20]

Petitioner then filed a Petition for *Certiorari* under Rule 65 before the Court of Appeals, alleging grave abuse of discretion on the part of the OP for having denied its Motion for Reconsideration.

In its Decision dated 21 February 2005, the Court of Appeals ruled:

Due to petitioner's abject failure to explain why public respondent [OP] acted with grave abuse of discretion in denying its motion for reconsideration for having been filed out of time, this Court has no choice but to uphold the validity of public respondent's [OP's] Order dated February 13, 2004 decreeing said denial, and, conformably, its Resolution dated December 10, 2003 dismissing petitioner's appeal and affirming the Order dated January 21, 2001 of DENR Secretary Antonio H. Cerilles.

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[20] *Id.* at 20-21.

WHEREFORE, the petition is hereby DISMISSED.[21]

When the appellate court denied petitioner's Motion for Reconsideration in its Resolution[22] dated 10 June 2005, petitioner was prompted to file the instant Petition before this Court, based on the following sole issue:

> The only issue to be resolved is whether or not the said motion for reconsideration was filed on time when it was sent by registered mail on January 22, 2004, not on January 27, 2004.[23]

In its 13 February 2004 Order, the Office of the President denied petitioner's Motion for Reconsideration of its Resolution dated 10 December 2003, dismissing petitioner's appeal, because (1) petitioner did not promptly appeal or file a Motion for Reconsideration of the Order dated 8 January 2001 of DENR Secretary Cerilles affirming the free patents issued to private respondents; hence, the said Order has become final and executory, foreclosing any further remedy on the part of petitioner; and (2) petitioner's Motion for Reconsideration of the 10 December 2003 Resolution of the OP was likewise belatedly filed as petitioner received a copy thereof on 9 January 2004 and filed its Motion for Reconsideration only on 27 January 2004. The Court of Appeals, in its assailed Resolution, affirmed in its entirety the ruling of the OP.

Petitioner, however, belies the finding of the OP that it filed its Motion for Reconsideration of the 10 December 2003 Resolution of the OP on 27 January 2004, and vigorously insists that the said Motion was timely filed by registered mail on 22 January 2004.

We grant the petition.

Appeals to the Office of the President are governed by Administrative Order No. 18, Series of 1987. Section 7 thereof governs the filing of a motion for reconsideration:

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[21] *Rollo*, p. 37.

[22] *Id.* at 38.

[23] *Id.* at 173.

Sec. 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.

According to the afore-quoted provision, a party has 15 days from receipt of a copy of the decision/resolution/order of the OP within which to file a motion for reconsideration of the same.

We are inclined to believe that petitioner's Motion for Reconsideration of the 10 December 2003 Resolution of the OP was filed on time. According to the Certification[24] issued by the Postmaster, petitioner's Motion for Reconsideration was sent by registered mail on **22 January 2004** — not 27 January 2004, as erroneously found by the OP in its Order dated 13 February 2004 — only 13 days after petitioner's receipt of a copy of the 10 December 2003 Resolution of the OP on 9 January 2004, and well-within the reglementary period for the filing of a motion for reconsideration thereof. We accordingly give credence to the Postmaster's Certification, in light of the legal presumption, based on wisdom and experience, that official duty has been regularly performed. The Postmaster's Certification is sufficient evidence of the fact of mailing. This Certification is also fortified by the attached official receipt[25] evidencing the payment of the appropriate fee for the issuance of the said Certification by the Postmaster, as required by Memorandum Circular 2000-17[26]

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[24] THIS IS TO CERTIFY that as per records filed in this office Registered Letter No. 314 mailed and posted on Jan. 22, 2004 addressed to the Office of the President, Malacañang, Manila sent by Atty. Eleuterio M. Obial was dispatched under Bill N. 15 line 14 on Jan. 23, 2004 CMEC-DOM. Reg.

THIS CERTIFICATION is issued upon request of Atty. Obial for whatever legal purpose this may serve him. (CA *rollo*, p. 142.)

[25] CA *rollo*, p. 143.

[26] Prescribing the amount of PhP20.00 to be paid for the issuance of a certification of document or information based on record on file at the Central Records Station of the Post Office.

dated 18 February 2000 of the Department of Transportation and Communication. The burden of proving the irregularity, if any, in the official conduct of the Postmaster falls on the party asserting the same.[27] Private respondents failed to discharge such burden in this case.

That petitioner presented the Postmaster's Certification only before the Court of Appeals is simply logical, considering that the date of filing of its Motion for Reconsideration became an issue only when the OP, in its Order dated 13 February 2004, denied said Motion for being belatedly filed. Since, under the general rule, petitioner can no longer file a second Motion for Reconsideration before the OP, to which it could have attached the Postmaster's Certification proving the actual date of mailing of its Motion for Reconsideration on 22 January 2004 instead of 24 January 2004, then petitioner submitted the said certification to the Court of Appeals before which it assailed the 13 February 2004 Order of the OP for having been rendered with grave abuse of discretion.

Even assuming *arguendo* that petitioner's Motion for Reconsideration was timely filed before the OP, it is argued that the same cannot be granted, given that petitioner's appeal before the OP was itself filed beyond the reglementary period. The Order of DENR Secretary Cerilles was issued on 8 January 2001; yet, petitioner only filed its appeal thereof before the OP on 24 July 2001, after a lapse of more than six months. Thus, the 8 January 2001 Order of DENR Secretary Cerilles had already become final and executory and can no longer be the subject of an appeal.

Noticeably, both the OP and the Court of Appeals lightly brushed aside the very serious allegations of petitioner that it did not previously receive any copy of the Order dated 8 January 2001 of DENR Secretary Cerilles, and that its counsel personally received a copy of the same only on 13 July 2001 when he visited the DENR Central Office. According to the OP, the

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[27] *Forever Security & General Services v. Flores*, G.R. No. 147961, 7 September 2007, 532 SCRA 454, 467.

naked assertions of petitioner cannot stand against the "documented fact of record consisting of the 1st Indorsement, dated 7 August 2001 of the Director, DENR Legal Service, Quezon City, that the aforementioned DENR order may now be considered final and executory on account of the Certification, dated 23 July 2001, of the Chief, DENR Records Management and Documentation Division, that based on the records, there is no Notice of Appeal/Motion for Reconsideration filed by [petitioner's members] *vis-à-vis* said DENR order." These documents, however, to which the OP referred, *did not establish that a copy of the 8 January 2001 Order of DENR Secretary Cerilles was actually sent to petitioner and received by the latter, and the date of such receipt*. Made part of the records was a hand-written letter dated 13 July 2001 of petitioner's counsel requesting for a copy of the 8 January 2001 Order of DENR Secretary Cerilles, which was received and favorably acted upon by the DENR Central Office on the same date[28]; it is the only proof that petitioner indeed received a copy of said Order.

Administrative Order No. 87, series of 1990,[29] provides for the procedure for the perfection of appeals from the decisions/orders of the DENR Regional Offices to the DENR Secretary. It states:

> Sec. 1. *Perfection of Appeals*. — a) Unless otherwise provided by law or executive order, appeals from the decisions/orders of the DENR Regional Offices shall be perfected within fifteen (15) days after receipt of a copy of the decision/order complained of by the party adversely affected, by filing with the Regional Office which adjudicated the case a notice of appeal, **serving copies thereof upon the prevailing party** and the Office of the Secretary, and paying the required fees.

Very obviously, as mandated by the above provision, it is the bounden duty of the private respondents to furnish the

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[28] CA *rollo*, p. 94.

[29] Regulations Governing Appeals to the Office of the Secretary from the Decisions/Orders of the Regional Offices.

petitioner with copies of their appeal to the DENR Secretary. The burden is upon them to show that they had complied with the legal duty. They failed to discharge said burden. It thus appear that petitioner was not a participant in the appeal interposed by private respondents. Such non-participation was never petitioner's choice as the record is lacking in any indication that petitioner was notified of private respondents' appeal. Neither was petitioner required to comment thereon.[30] Even then, when petitioner was able to get a copy of the order of 8 January 2001, on 13 July 2001, it filed a petition for review with the OP on 24 July 2001, or 11 days from receipt of the copy of the order on 13 July 2001.

Clearly, there could have been no basis for holding that petitioner (a) did not appeal the decision of the DENR Secretary and (b) belatedly filed its motion for reconsideration of the OP's 10 December 2003 decision, thus making the decision final and executory.

Assuming, without admitting, that there were technical procedural lapses committed by the petitioner, public interest and the interest of substantial justice require a resolution on the merits of the case instead of a mere dismissal thereof based on alleged technical grounds. The following reasons led us towards this direction:

(1) It must be emphasized that DENR-RED Serrano's findings are in direct conflict with those of DENR Secretary Cerilles: while the former ruled in favor of petitioner, finding that the free patents of private respondents were issued through fraud and misrepresentation, the latter found in favor of private respondents, upholding their free patents. Hence, there is apparent need to review the arguments raised and evidence submitted by the parties.

(2) We also take note that private respondents themselves filed a case for Unlawful Detainer against the petitioner before

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[30] *Philippine National Construction Corporation v. National Labor Relations Commission*, 354 Phil. 274, 280 (1998).

the Municipal Trial Court (MTC) of Mariveles, Bulacan, docketed as Civil Case No. 97-717. In its Consolidated Decision[31] dated 27 July 1998, the MTC decided the case in petitioner's favor, awarding to it the possession of the subject property.[32] This MTC decision had already attained finality and the corresponding writ of execution was already issued for the satisfaction of the judgment.

(3) There are important multiple and factual issues to be resolved, which may include but not necessarily be limited to whether petitioner, and not private respondents, are in possession of the subject property; whether petitioner applied for free patents over the subject property ahead of private respondents; whether petitioner, rather than private respondents, has a better right to the free patents on the subject property; whether the free patents in the name of private respondents were issued based on fraud and misrepresentation of facts; whether private respondents' free patents may be cancelled; and whether any of the apparent conflicting resolutions of the different courts in various cases should bind or affect the ruling in this case.

(4) Most importantly, the present controversy involved petitioner's sacrosanct right to property, which is protected by the Constitution. No person should be deprived of life, liberty, or property without due process of law.[33]

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of the dockets of the courts is a laudable objective, it nevertheless must not be met at the expense of substantial justice.[34]

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[31] CA *rollo*, p. 77.

[32] Entitled "*Renedel Mendoza vs. Micahel Pesimo*, Civil Case No. 97-718; *Dante Manalaysay vs. Sofronio Dilao*, Civil Case No. 97-717 and *Erickson Malig vs. Rodolfo Limbawan*, Civil Case No. 97-719." The Consolidated decision of the MTC dated 27 July 1998 in favor of the herein petitioner became final and executory; and the MTC of Mariveles, Bataan, issued a writ of execution dated 22 October 1999. (CA *rollo*, p. 82.)

[33] PHILIPPINE CONSTITUTION, Article III, Section 1; *Macasasa v. Sicad*, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383.

[34] *Wack Wack Golf and Country Club v. National Labor Relations Commission*, G.R. 149793, 15 April 2005, 456 SCRA 380, 294.

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[35]

In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases to which we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant is given the full opportunity for a just and proper disposition of his cause.[36]

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, we have consistently held that rules must not be applied so rigidly as to override substantial justice.[37]

What is more, rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies. Thus, technical rules of procedure imposed in judicial proceedings are unavailing in cases before administrative bodies. Administrative bodies are not bound by the technical niceties of law and procedure

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[35] *Id*.

[36] *Neypes v. Court of Appeals*, G.R. No. 141524, 14 September 2005, 469 SCRA 633, 643.

[37] *Peñoso v. Dona*, G.R. No. 154018, 3 April 2007, 520 SCRA 232, 240-241.

and the rules obtaining in the courts of law. Rules of procedure are not to be applied in a very rigid and technical manner, as they are used only to hold secure and not to override substantial justice.[38]

ALL TOLD, the OP and, consequently, the Court of Appeals should have looked beyond the alleged technicalities to open the way for the resolution of the substantive issues in the instance case. There was grave abuse of discretion on the part of the OP for dismissing petitioner's appeal on illusory technical grounds even in the light of the meritorious circumstances which should have compelled it to look beyond procedural rules. The Court of Appeals, thus, erred in dismissing petitioner's Petition for *Certiorari*. By dismissing the said Petition, therefore, affirming the dismissal by the OP of petitioner's appeal on technical grounds, the Court of Appeals absolutely foreclosed the resolution of all the substantive issues petitioner was repeatedly attempting to raise before the proper forum. Indubitably, justice would have been better served if the Court of Appeals directed the OP to resolve petitioner's appeal on the merits.

Ordinarily, when there is sufficient evidence before the Court to enable it to resolve fundamental issues, it will dispense with the regular procedure of remanding the case to the lower court or appropriate tribunal in order to avoid a further delay in the resolution of the case. However, a remand of this case, while time consuming, is necessary because the proceedings below are grossly inadequate to settle factual issues.[39]

When the law entrusts the review of factual and substantive issues to a lower court or to a quasi-judicial tribunal, the court or agency must be given the opportunity to pass upon these issues. Only thereafter may the parties resort to this Court.[40]

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[38] *Department of Agrarian Reform v. Uy*, G.R. No. 169277, 9 February 2007, 515 SCRA 376, 397-399.

[39] *Simon v. Canlas*, G.R. No. 148273, 19 April 2006, 487 SCRA 433, 450.

[40] *Torres v. Specialized Packaging Development Corporation*, G.R. No.149634, 6 July 2004, 433 SCRA 455, 468.

WHEREFORE, premises considered, the Petition is *GRANTED*. The Decision dated 21 February 2005 and Resolution dated 10 June 2005 of the Court of Appeals in CA-G.R. SP No. 83556 are *SET ASIDE*. This case is remanded to the Office of the President for further proceedings and determination thereof on the merits. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170325. September 26, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **ERLANDO T. RODRIGUEZ and NORMA RODRIGUEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; AMENDMENT; A COURT DISCOVERING AN ERRONEOUS JUDGMENT BEFORE IT BECOMES FINAL MAY, *MOTU PROPRIO* OR UPON MOTION OF THE PARTIES, CORRECT ITS JUDGMENT. — Amendment of decisions is more acceptable than an erroneous judgment attaining finality to the prejudice of innocent parties. A court discovering an erroneous judgment before it becomes final may, *motu proprio* or upon motion of the parties, correct its judgment with the singular objective of achieving justice for the litigants.

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[*] Justice Teresita J. Leonardo-de Castro was designated to sit as additional member, replacing Justice Antonio Eduardo B. Nachura per Raffle dated 23 May 2008.

2. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS; CHECK; DEFINED; WHEN CONSIDERED A BEARER INSTRUMENT. — As a rule, when the payee is fictitious or not intended to be the true recipient of the proceeds, the check is considered as a bearer instrument. A check is "a bill of exchange drawn on a bank payable on demand." It is either an order or a bearer instrument.

3. ID.; ID.; BEARER AND ORDER INSTRUMENTS, DISTINGUISHED; WHAT CONSTITUTES NEGOTIATION. — The **distinction** between bearer and order instruments lies in their manner of negotiation. Under Section 30 of the NIL, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. It is negotiable by mere delivery. The provision reads: SEC. 30. *What constitutes negotiation.* — An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery.

4. ID.; ID.; ID.; A CHECK THAT IS PAYABLE TO A SPECIFIED PAYEE IS AN ORDER INSTRUMENT; EXCEPTION. — A check that is payable to a specified payee is an order instrument. However, under Section 9(c) of the NIL, a check payable to a specified payee may nevertheless be considered as a bearer instrument if it is payable to the order of a fictitious or non-existing person, and such fact is known to the person making it so payable. Thus, checks issued to "*Prinsipe Abante*" or "*Si Malakas at si Maganda*," who are well-known characters in Philippine mythology, are bearer instruments because the named payees are fictitious and non-existent.

5. ID.; ID.; ID.; FICTITIOUS PAYEE; ELUCIDATED. — A review of US jurisprudence yields that an actual, existing, and living payee may also be "fictitious" if the maker of the check did not intend for the payee to in fact receive the proceeds of the check. This usually occurs when the maker places a name of an existing payee on the check for convenience or to cover up an illegal activity. Thus, a check made expressly payable to a non-fictitious and existing person is not necessarily an order instrument. **If the payee is not the intended recipient of**

the proceeds of the check, the payee is considered a "fictitious" payee and the check is a bearer instrument.

6. ID.; ID.; ID.; ID.; DRAWEE BANK ABSOLVED FROM LIABILITY AND THE DRAWER BEARS THE LOSS; RATIONALE. — In a fictitious-payee situation, the drawee bank is absolved from liability and **the drawer bears the loss**. When faced with a check payable to a fictitious payee, it is treated as a bearer instrument that can be negotiated by delivery. The underlying theory is that one cannot expect a fictitious payee to negotiate the check by placing his indorsement thereon. And since the maker knew this limitation, he must have intended for the instrument to be negotiated by mere delivery. Thus, in case of controversy, the drawer of the check will bear the loss. This rule is justified for otherwise, it will be most convenient for the maker who desires to escape payment of the check to always deny the validity of the indorsement. This despite the fact that the fictitious payee was purposely named without any intention that the payee should receive the proceeds of the check.

7. ID.; ID.; ID.; ID.; ID.; A SHOWING OF NEGLIGENCE ON THE PART OF THE DRAWEE BANK WILL NOT DEFEAT THE PROTECTION DERIVED FROM THE FICTITIOUS-PAYEE RULE. — The more recent *Getty Petroleum Corp. v. American Express Travel Related Services Company, Inc.* upheld the fictitious-payee rule. The rule protects the depositary bank and assigns the loss to the drawer of the check who was in a better position to prevent the loss in the first place. Due care is not even required from the drawee or depositary bank in accepting and paying the checks. The effect is that a showing of negligence on the part of the depositary bank will not defeat the protection that is derived from this rule.

8. ID.; ID.; ID.; ID.; ID.; A SHOWING OF COMMERCIAL BAD FAITH ON THE PART OF THE DRAWEE BANK, OR ANY TRANSFEREE OF THE CHECK FOR THAT MATTER, WILL CAUSE IT TO BEAR THE LOSS. — There is a commercial bad faith exception to the fictitious-payee rule. A showing of commercial **bad faith** on the part of the **drawee bank, or any transferee** of the check for that matter, **will work to strip it of this defense**. The exception will cause it to bear the loss. Commercial bad faith is present if the transferee

of the check acts dishonestly, and is a party to the fraudulent scheme.

9. ID.; ID.; ID.; ID.; ID.; FAILURE OF THE DRAWEE BANK TO SHOW THAT THE PAYEES WERE "FICTITIOUS" IN ITS BROADER SENSE, RENDERS FICTITIOUS-PAYEE RULE NOT APPLICABLE. — Verily, the subject checks are presumed order instruments. This is because, as found by both lower courts, PNB failed to present sufficient evidence to defeat the claim of respondents-spouses that the named payees were the intended recipients of the checks' proceeds. The bank failed to satisfy a requisite condition of a fictitious-payee situation — that the maker of the check intended for the payee to have no interest in the transaction. Because of a **failure** to show that the payees were "fictitious" in its broader sense, the fictitious-payee rule does **not** apply. Thus, the checks are to be deemed payable to order. Consequently, the drawee bank bears the loss.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; BANKS SHALL EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN THE SELECTION AND SUPERVISION OF THEIR EMPLOYEES; CASE AT BAR. — PNB was negligent in the selection and supervision of its employees. The trustworthiness of bank employees is indispensable to maintain the stability of the banking industry. Thus, banks are enjoined to be extra vigilant in the management and supervision of their employees. In *Bank of the Philippine Islands v. Court of Appeals*, this Court cautioned thus: Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. PNB's tellers and officers, in violation of banking rules of procedure, permitted the invalid deposits of checks to the PEMSLA account. Indeed, when it is the gross negligence of the bank employees that caused the loss, the bank should be held liable.

APPEARANCES OF COUNSEL

Kenneth A. Alovera for petitioner.
Joel G. Dojillo for respondents.

D E C I S I O N

REYES, R.T., *J.*:

WHEN the payee of the check is not intended to be the true recipient of its proceeds, is it payable to order or bearer? What is the fictitious-payee rule and who is liable under it? Is there any exception?

These questions seek answers in this petition for review on *certiorari* of the Amended Decision[1] of the Court of Appeals (CA) which affirmed with modification that of the Regional Trial Court (RTC).[2]

The Facts

The facts as borne by the records are as follows:

Respondents-Spouses Erlando and Norma Rodriguez were clients of petitioner Philippine National Bank (PNB), Amelia Avenue Branch, Cebu City. They maintained savings and demand/checking accounts, namely, PNBig Demand Deposits (Checking/Current Account No. 810624-6 under the account name Erlando and/or Norma Rodriguez), and PNBig Demand Deposit (Checking/Current Account No. 810480-4 under the account name Erlando T. Rodriguez).

The spouses were engaged in the informal lending business. In line with their business, they had a discounting[3] arrangement

[1] CA-G.R. CV No. 76645 dated October 11, 2005. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., concurring; *rollo*, pp. 29-42.

[2] Civil Case No. 99-10892, Regional Trial Court in Negros Occidental, Branch 51, Bacolod City, dated May 10, 2002; CA *rollo*, pp. 63-72.

[3] A financing scheme where a postdated check is exchanged for a current check with a discounted face value.

with the Philnabank Employees Savings and Loan Association (PEMSLA), an association of PNB employees. Naturally, PEMSLA was likewise a client of PNB Amelia Avenue Branch. The association maintained current and savings accounts with petitioner bank.

PEMSLA regularly granted loans to its members. Spouses Rodriguez would rediscount the postdated checks issued to members whenever the association was short of funds. As was customary, the spouses would replace the postdated checks with their own checks issued in the name of the members.

It was PEMSLA's policy not to approve applications for loans of members with outstanding debts. To subvert this policy, some PEMSLA officers devised a scheme to obtain additional loans despite their outstanding loan accounts. They took out loans in the names of unknowing members, without the knowledge or consent of the latter. The PEMSLA checks issued for these loans were then given to the spouses for rediscounting. The officers carried this out by forging the indorsement of the named payees in the checks.

In return, the spouses issued their personal checks (Rodriguez checks) in the name of the members and delivered the checks to an officer of PEMSLA. The PEMSLA checks, on the other hand, were deposited by the spouses to their account.

Meanwhile, the Rodriguez checks were deposited directly by PEMSLA to its savings account **without any indorsement** from the named payees. This was an irregular procedure made possible through the facilitation of Edmundo Palermo, Jr., treasurer of PEMSLA and bank teller in the PNB Branch. It appears that this became the usual practice for the parties.

For the period November 1998 to February 1999, the spouses issued sixty-nine (69) checks, in the total amount of ₱2,345,804.00. These were payable to forty-seven (47) individual payees who were all members of PEMSLA.[4]

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[4] Current Account No. 810480-4 in the name of Erlando T. Rodriguez

Petitioner PNB eventually found out about these fraudulent acts. To put a stop to this scheme, PNB closed the current account of PEMSLA. As a result, the PEMSLA checks deposited

Name of Payees	Check No.	Date Issued	Amount
01. Simon Carmelo B. Libo-on	0001110	11.27.98	40,934.00
02. Simon Carmelo Libo-on	0000011589	02.01.99	29,877.00
03. Simon Libo-on	0000011567	01.25.99	50,350.00
04. Pacifico Castillo	0000011565	01.22.99	39,995.00
05. Jose Bago-od	0000011587	02.01.99	38,000.00
06. Dioleto Delcano	0000011594	02.02.99	28,500.00
07. Antonio Maravilla	0000011593	02.02.99	37,715.00
08. Josel Juguan	0000011595	02.02.99	45,002.00
09. Domingo Roa, Jr.	0000011591	02.01.99	35,373.00
10. Antonio Maravilla	0001657	02.05.99	39,900.00
11. Christy Mae Berden	0001655	02.05.99	28,595.00
12. Nelson Guadalupe	0000011588	02.01.99	34,819.00
13. Antonio Londres	0000011596	02.05.99	32,851.00
14. Arnel Navarosa	0000011597	02.05.99	28,785.00
15. Estrella Alunan	0000011600	02.05.99	32,509.00
16. Dennis Montemayor	0000011598	02.05.99	43,691.00
17. Mickle Argusar	0000011599	02.05.99	31,498.00
18. Perlita Gallego	0000011564	01.21.99	38,000.00
19. Sheila Arcobillas	0000011563	01.19.99	38,000.00
20. Danilo Villarosa	0001656	02.05.99	32,006.00
21. Almie Borce	0000011583	02.01.99	20,093.00
22. Ronie Aragon	0000011566	01.20.99	28,844.00
		Total:	775,337.00

Current Account No. 810624-6 in the name of Erlando and/or Norma Rodriguez

Name of Payees	Check No.	Date Issued	Amount
01. Elma Bacarro	0001944	01.15.99	37,449.00
02. Delfin Recarder	0001927	01.14.99	30,020.00
03. Elma Bacarro	0001926	01.14.99	34,884.00
04. Perlita Gallego	0001924	01.14.99	35,502.00
05. Jose Weber	0001932	01.14.99	38,323.00
06. Rogelio Alfonso	0001922	01.14.99	43,852.00
07. Gianni Amantillo	0001928	01.14.99	32,414.00
08. Eddie Bago-od	0001929	01.14.99	38,361.00
09. Manuel Longero	0001933	01.14.99	38,285.00
10. Anavic Lorenzo	0001923	01.14.99	29,982.00
11. Corazon Salva	0001945	01.15.99	37,449.00
12. Arlene Diamante	0001951	01.18.99	39,995.00
13. Joselin Laurilla	0001955	01.18.99	37,221.00

by the spouses were returned or dishonored for the reason "Account Closed." The corresponding Rodriguez checks, however, were deposited as usual to the PEMSLA savings account. The amounts were duly debited from the Rodriguez account. Thus, because the PEMSLA checks given as payment were returned, spouses Rodriguez incurred losses from the rediscounting transactions.

14. Andy Javellana	0001960	01.22.99	30,923.00
15. Erdelinda Porras	0001958	01.22.99	40,679.00
16. Nelson Guadalupe	0001956	01.18.99	24,700.00
17. Barnard Escano	0001969	01/22/99	38,304.00
18. Buena Coscolluela	0001968	01/22/99	37,706.00
19. Erdelinda Porras	0002021	02/01/99	36,727.00
20. Neda Algara	0002023	02/01/99	38,000.00
21 Eddie Bago-od	0002030	02/02/99	26,600.00
22. Gianni Amantillo	0002032	02/02/99	19,000.00
23. Alfredo Llena	0002020	02/01/99	32,282.00
24. Emmanuel Fermo	0001972	01/22/99	36,376.00
25 Yvonne Ano-os	0001967	01/22/99	36,566.00
26. Joel Abibuag	0002022	02/01/99	37,981.00
27. Ma. Corazon Salva	0002029	02/02/99	25,270.00
28. Jose Bago-od	0001957	01/18/99	34,656.00
29. Avelino Brion	0001965	01/22/99	31,882.00
30. Mickle Algusar	0001962	01/22/99	25,004.00
31. Jose Weber	0001959	01/22/99	37,001.00
32. Joel Velasco	0002028	02/02/99	9,500.00
33. Elma Bacarro	0002031	02/02/99	23,750.00
34. Grace Tambis	0001952	01/18/99	39,995.00
35. Proceso Mailim	0001980	01/21/99	37,193.00
36. Ronnie Aragon	0001983	01/22/99	30,324.00
37. Danilo Villarosa	0001931	01/14/99	31,008.00
38. Joel Abibuag	0001954	01/18/99	26,600.00
39. Danilo Villarosa	0001984	01/22/99	26,790.00
40. Reynard Guia	0001985	01/22/99	42,959.00
41. Estrella Alunan	0001925	01/14/99	39,596.00
42. Eddie Bago-od	0001982	01/22/99	31,018.00
43. Jose Bago-od	0001982	01/22/99	37,240.00
44. Nicandro Aguilar	0001964	01/22/99	52,250.00
45. Guandencia Banaston	0001963	01/22/99	38,000.00
46. Dennis Montemayor	0001961	01/22/99	26,600.00
47. Eduardo Buglosa	0002027	01/02/99	14,250.00
		Total	1,570,467.00
		Grand Total	2,345,804.00

RTC Disposition

Alarmed over the unexpected turn of events, the spouses Rodriguez filed a civil complaint for damages against PEMSLA, the Multi-Purpose Cooperative of Philnabankers (MCP), and petitioner PNB. They sought to recover the value of their checks that were deposited to the PEMSLA savings account amounting to ₱2,345,804.00. The spouses contended that because **PNB credited the checks to the PEMSLA account even without indorsements,** PNB violated its contractual obligation to them as depositors. PNB paid the wrong payees, hence, it should bear the loss.

PNB moved to dismiss the complaint on the ground of lack of cause of action. PNB argued that the claim for damages should come from the payees of the checks, and not from spouses Rodriguez. Since there was no demand from the said payees, the obligation should be considered as discharged.

In an Order dated January 12, 2000, the RTC denied PNB's motion to dismiss.

In its Answer,[5] PNB claimed it is not liable for the checks which it paid to the PEMSLA account without any indorsement from the payees. The bank contended that spouses Rodriguez, the makers, actually **did not intend for the named payees to receive the proceeds of the checks.** Consequently, the payees were considered as "**fictitious payees**" as defined under the Negotiable Instruments Law (NIL). Being checks made to fictitious payees which are bearer instruments, the checks were negotiable by mere delivery. PNB's Answer included its cross-claim against its co-defendants PEMSLA and the MCP, praying that in the event that judgment is rendered against the bank, the cross-defendants should be ordered to reimburse PNB the amount it shall pay.

After trial, the RTC rendered judgment in favor of spouses Rodriguez (plaintiffs). It ruled that PNB (defendant) is liable to return the value of the checks. All counterclaims and cross-claims were dismissed. The dispositive portion of the RTC decision reads:

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[5] *Rollo,* pp. 64-69.

WHEREFORE, in view of the foregoing, the Court hereby renders judgment, as follows:

1. Defendant is hereby ordered to pay the plaintiffs the total amount of ₱2,345,804.00 or reinstate or restore the amount of ₱775,337.00 in the PNBig Demand Deposit Checking/ Current Account No. 810480-4 of Erlando T. Rodriguez, and the amount of ₱1,570,467.00 in the PNBig Demand Deposit, Checking/Current Account No. 810624-6 of Erlando T. Rodriguez and/or Norma Rodriguez, plus legal rate of interest thereon to be computed from the filing of this complaint until fully paid;

2. The defendant PNB is hereby ordered to pay the plaintiffs the following reasonable amount of damages suffered by them taking into consideration the standing of the plaintiffs being sugarcane planters, realtors, residential subdivision owners, and other businesses:

   (a) Consequential damages, unearned income in the amount of ₱4,000,000.00, as a result of their having incurred great dificulty (*sic*) especially in the residential subdivision business, which was not pushed through and the contractor even threatened to file a case against the plaintiffs;

   (b) Moral damages in the amount of ₱1,000,000.00;

   (c) Exemplary damages in the amount of ₱500,000.00;

   (d) Attorney's fees in the amount of ₱150,000.00 considering that this case does not involve very complicated issues; and for the

   (e) Costs of suit.

3. Other claims and counterclaims are hereby dismissed.[6]

CA Disposition

PNB appealed the decision of the trial court to the CA on the principal ground that the disputed checks should be considered as payable to bearer and not to order.

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[6] , . 71 72.

In a Decision[7] dated July 22, 2004, the CA reversed and set aside the RTC disposition. The CA concluded that the checks were obviously meant by the spouses to be really paid to PEMSLA. The court *a quo* declared:

> We are not swayed by the contention of the plaintiffs-appellees (Spouses Rodriguez) that their cause of action arose from the alleged breach of contract by the defendant-appellant (PNB) when it paid the value of the checks to PEMSLA despite the checks being payable to order. *Rather, we are more convinced by the strong and credible evidence for the defendant-appellant with regard to the plaintiffs-appellees' and PEMSLA's business arrangement — that the value of the rediscounted checks of the plaintiffs-appellees would be deposited in PEMSLA's account for payment of the loans it has approved in exchange for PEMSLA's checks with the full value of the said loans.* This is the only obvious explanation as to why all the disputed sixty-nine (69) checks were in the possession of PEMSLA's errand boy for presentment to the defendant-appellant that led to this present controversy. It also appears that the teller who accepted the said checks was PEMSLA's officer, and that such was a regular practice by the parties until the defendant-appellant discovered the scam. *The logical conclusion, therefore, is that the checks were never meant to be paid to order, but instead, to PEMSLA.* We thus find no breach of contract on the part of the defendant-appellant.
>
> According to plaintiff-appellee Erlando Rodriguez' testimony, PEMSLA allegedly issued post-dated checks to its qualified members who had applied for loans. However, because of PEMSLA's insufficiency of funds, PEMSLA approached the plaintiffs-appellees for the latter to issue rediscounted checks in favor of said applicant members. Based on the investigation of the defendant-appellant, meanwhile, this arrangement allowed the plaintiffs-appellees to make a profit by issuing rediscounted checks, while the officers of PEMSLA and other members would be able to claim their loans, despite the fact that they were disqualified for one reason or another. They were able to achieve this conspiracy by using other members who had loaned lesser amounts of money or had not applied at all. x x x.[8] (Emphasis added)

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[7] *Rollo*, pp. 44-49. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Elvi John S. Asuncion and Ramon M. Bato, Jr., concurring.

[8] *Id.* at 47.

The CA found that the checks were bearer instruments, thus they do not require indorsement for negotiation; and that spouses Rodriguez and PEMSLA conspired with each other to accomplish this money-making scheme. The payees in the checks were "fictitious payees" because they were not the intended payees at all.

The spouses Rodriguez moved for reconsideration. They argued, *inter alia*, that the checks on their faces were unquestionably payable to order; and that PNB committed a breach of contract when it paid the value of the checks to PEMSLA without indorsement from the payees. They also argued that their cause of action is not only against PEMSLA but also against PNB to recover the value of the checks.

On October 11, 2005, the CA **reversed** itself via an Amended Decision, the last paragraph and *fallo* of which read:

> In sum, we rule that the defendant-appellant PNB is liable to the plaintiffs-appellees Sps. Rodriguez for the following:
>
> 1. Actual damages in the amount of ₱2,345,804 with interest at 6% per annum from 14 May 1999 until fully paid;
> 2. Moral damages in the amount of ₱200,000;
> 3. Attorney's fees in the amount of ₱100,000; and
> 4. Costs of suit.
>
> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by Us AFFIRMING WITH MODIFICATION the assailed decision rendered in Civil Case No. 99-10892, as set forth in the immediately next preceding paragraph hereof, and SETTING ASIDE Our original decision promulgated in this case on 22 July 2004.
>
> SO ORDERED.[9]

The CA ruled that the checks were payable to order. According to the appellate court, PNB failed to present sufficient proof to defeat the claim of the spouses Rodriguez that they really intended

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[9] *Id.* at 41.

the checks to be received by the specified payees. Thus, PNB is liable for the value of the checks which it paid to PEMSLA without indorsements from the named payees. The award for damages was deemed appropriate in view of the failure of PNB to **treat the Rodriguez account with the highest degree of care considering the fiduciary nature of their relationship,** which constrained respondents to seek legal action.

Hence, the present recourse under Rule 45.

Issues

The issues may be compressed to whether the subject checks are payable to order or to bearer and who bears the loss?

PNB argues anew that when the spouses Rodriguez issued the disputed checks, they did not intend for the named payees to receive the proceeds. Thus, they are bearer instruments that could be validly **negotiated by mere delivery.** Further, testimonial and documentary evidence presented during trial amply proved that spouses Rodriguez and the officers of PEMSLA conspired with each other to defraud the bank.

Our Ruling

Prefatorily, amendment of decisions is more acceptable than an erroneous judgment attaining finality to the prejudice of innocent parties. A court discovering an erroneous judgment before it becomes final may, *motu proprio* or upon motion of the parties, correct its judgment with the singular objective of achieving justice for the litigants.[10]

However, a word of caution to lower courts, the CA in Cebu in this particular case, is in order. The Court does not sanction careless disposition of cases by courts of justice. The highest degree of diligence must go into the study of every controversy submitted for decision by litigants. Every issue and factual detail must be closely scrutinized and analyzed, and all the applicable laws judiciously studied, before the promulgation of every judgment by the court. Only in this manner will errors in judgments be avoided.

[10] *Veluz v. Justice of the Peace of Sariaga,* 42 Phil. 557 (1921).

Now to the core of the petition.

As a rule, when the payee is fictitious or not intended to be the true recipient of the proceeds, the check is considered as a bearer instrument. A check is "a bill of exchange drawn on a bank payable on demand."[11] It is either an order or a bearer instrument. Sections 8 and 9 of the NIL states:

SEC. 8. *When payable to order*. — The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of –

(a) A payee who is not maker, drawer, or drawee; or
(b) The drawer or maker; or
(c) The drawee; or
(d) Two or more payees jointly; or
(e) One or some of several payees; or
(f) The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

SEC. 9. *When payable to bearer*. — The instrument is payable to bearer —

(a) When it is expressed to be so payable; or
(b) When it is payable to a person named therein or bearer; or
(c) When it is payable to the order of a fictitious or non-existing person, and such fact is known to the person making it so payable; or
(d) When the name of the payee does not purport to be the name of any person; or
(e) Where the only or last indorsement is an indorsement in blank.[12] (Underscoring supplied)

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[11] Negotiable Instruments Law, Sec. 185. *Check defined*. — A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

Section 126. *Bill of exchange defined*. — A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

[12] *Id*.

The **distinction** between bearer and order instruments lies in their manner of negotiation. Under Section 30 of the NIL, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. It is negotiable by mere delivery. The provision reads:

> SEC. 30. *What constitutes negotiation.* — An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery.

A check that is payable to a specified payee is an order instrument. However, under Section 9(c) of the NIL, a check payable to a specified payee may nevertheless be considered as a bearer instrument if it is payable to the order of a fictitious or non-existing person, and such fact is known to the person making it so payable. Thus, checks issued to "*Prinsipe Abante*" or "*Si Malakas at si Maganda*," who are well-known characters in Philippine mythology, are bearer instruments because the named payees are fictitious and non-existent.

We have yet to discuss a broader meaning of the term "fictitious" as used in the NIL. It is for this reason that We look elsewhere for guidance. Court rulings in the United States are a logical starting point since our law on negotiable instruments was directly lifted from the Uniform Negotiable Instruments Law of the United States.[13]

A review of US jurisprudence yields that an actual, existing, and living payee may also be "fictitious" if the maker of the check did not intend for the payee to in fact receive the proceeds of the check. This usually occurs when the maker places a name of an existing payee on the check for convenience or to

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[13] Campos, J.C., Jr. and Lopez-Campos, M.C., *Notes and Selected Cases on Negotiable Instruments Law* (1994), 5th ed., pp. 8-9.

cover up an illegal activity.[14] Thus, a check made expressly payable to a non-fictitious and existing person is not necessarily an order instrument. **If the payee is not the intended recipient of the proceeds of the check, the payee is considered a "fictitious" payee and the check is a bearer instrument.**

In a fictitious-payee situation, the drawee bank is absolved from liability and **the drawer bears the loss**. When faced with a check payable to a fictitious payee, it is treated as a bearer instrument that can be negotiated by delivery. The underlying theory is that one cannot expect a fictitious payee to negotiate the check by placing his indorsement thereon. And since the maker knew this limitation, he must have intended for the instrument to be negotiated by mere delivery. Thus, in case of controversy, the drawer of the check will bear the loss. This rule is justified for otherwise, it will be most convenient for the maker who desires to escape payment of the check to always deny the validity of the indorsement. This despite the fact that the fictitious payee was purposely named without any intention that the payee should receive the proceeds of the check.[15]

The fictitious-payee rule is best illustrated in *Mueller & Martin v. Liberty Insurance Bank*.[16] In the said case, the corporation Mueller & Martin was defrauded by George L. Martin, one of its authorized signatories. Martin drew seven checks payable to the German Savings Fund Company Building Association (GSFCBA) amounting to $2,972.50 against the account of the corporation without authority from the latter. Martin was also an officer of the GSFCBA but did not have signing authority. At the back of the checks, Martin placed the rubber stamp of the GSFCBA and signed his own name as indorsement. He then successfully drew the funds from Liberty Insurance Bank

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[14] *Bourne v. Maryland Casualty*, 192 SE 605 (1937); *Norton v. City Bank & Trust Co.*, 294 F. 839 (1923); *United States v. Chase Nat. Bank*, 250 F. 105 (1918).

[15] *Mueller & Martin v. Liberty Insurance Bank*, 187 Ky. 44, 218 SW 465 (1920).

[16] *Id*.

for his own personal profit. When the corporation filed an action against the bank to recover the amount of the checks, the claim was denied.

The US Supreme Court held in *Mueller* that when the person making the check so payable did not intend for the specified payee to have any part in the transactions, the payee is considered as a fictitious payee. The check is then considered as a bearer instrument to be validly negotiated by mere delivery. Thus, the US Supreme Court held that Liberty Insurance Bank, as drawee, was authorized to make payment to the bearer of the check, regardless of whether prior indorsements were genuine or not.[17]

The more recent *Getty Petroleum Corp. v. American Express Travel Related Services Company, Inc.*[18] upheld the fictitious-payee rule. The rule protects the depositary bank and assigns the loss to the drawer of the check who was in a better position to prevent the loss in the first place. Due care is not even required from the drawee or depositary bank in accepting and paying the checks. The effect is that a showing of negligence on the part of the depositary bank will not defeat the protection that is derived from this rule.

However, there is a commercial bad faith exception to the fictitious-payee rule. A showing of commercial **bad faith** on the part of the **drawee bank, or any transferee** of the check for that matter, **will work to strip it of this defense.** The exception will cause it to bear the loss. Commercial bad faith is present if the transferee of the check acts dishonestly, and is a party to the fraudulent scheme. Said the US Supreme Court in *Getty*:

> Consequently, a transferee's lapse of wary vigilance, disregard of suspicious circumstances which might have well induced a prudent banker to investigate and other permutations of negligence are not relevant considerations under Section 3-405 x x x. *Rather, there is a "commercial bad faith" exception to UCC 3-405, applicable when the transferee "acts dishonestly — where it has actual*

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[17] *Mueller & Martin v. Liberty Insurance Bank, id.*

[18] 90 NY 2d 322 (1997), citing the Uniform Commercial Code, Sec. 3-405.

knowledge of facts and circumstances that amount to bad faith, thus itself becoming a participant in a fraudulent scheme. x x x Such a test finds support in the text of the Code, which omits a standard of care requirement from UCC 3-405 but imposes on all parties an obligation to act with "honesty in fact." x x x[19] (Emphasis added)

Getty also laid the principle that the fictitious-payee rule extends protection even to non-bank transferees of the checks.

In the case under review, the Rodriguez checks were payable to specified payees. It is unrefuted that the 69 checks were payable to specific persons. Likewise, it is uncontroverted that the payees were actual, existing, and living persons who were members of PEMSLA that had a rediscounting arrangement with spouses Rodriguez.

What remains to be determined is if the payees, though existing persons, were "fictitious" in its broader context.

For the fictitious-payee rule to be available as a defense, PNB must show that the makers did not intend for the named payees to be part of the transaction involving the checks. At most, the bank's thesis shows that the payees did not have knowledge of the existence of the checks. **This lack of knowledge on the part of the payees, however, was not tantamount to a lack of intention on the part of respondents-spouses that the payees would not receive the checks' proceeds.** Considering that respondents-spouses were transacting with PEMSLA and not the individual payees, it is understandable that they relied on the information given by the officers of PEMSLA that the payees would be receiving the checks.

Verily, the subject checks are presumed order instruments. This is because, as found by both lower courts, PNB failed to

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[19] *Getty Petroleum Corp. v. American Express Travel Related Services Company, Inc., id.,* citing *Peck v. Chase Manhattan Bank,* 190 AD 2d 547, 548-549 (1993); *Touro Coll. v. Bank Leumi Trust Co.,* 186 AD 2d 425, 427 (1992); *Prudential-Bache Sec. v. Citibank, N.A.,* 73 NY 2d 276 (1989); *Merrill Lynch, Pierce, Fenner & Smith v. Chemical Bank,* 57 NY 2d 447 (1982).

present sufficient evidence to defeat the claim of respondents-spouses that the named payees were the intended recipients of the checks' proceeds. The bank failed to satisfy a requisite condition of a fictitious-payee situation — that the maker of the check intended for the payee to have no interest in the transaction.

Because of a **failure** to show that the payees were "fictitious" in its broader sense, the fictitious-payee rule does **not** apply. Thus, the checks are to be deemed payable to order. Consequently, the drawee bank bears the loss.[20]

PNB was remiss in its duty as the drawee bank. It does not dispute the fact that its teller or tellers accepted the 69 checks for deposit to the PEMSLA account even without any indorsement from the named payees. It bears stressing that order instruments can only be negotiated with a valid indorsement.

A bank that regularly processes checks that are neither payable to the customer nor duly indorsed by the payee is apparently grossly negligent in its operations.[21] This Court has recognized the unique public interest possessed by the banking industry and the need for the people to have full trust and confidence in their banks.[22] For this reason, banks are minded to treat their customer's accounts with utmost care, confidence, and honesty.[23]

In a checking transaction, the drawee bank has the duty to verify the genuineness of the signature of the drawer and to pay the check strictly in accordance with the drawer's instructions, *i.e.*, to the named payee in the check. It should charge to the

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[20] See *Traders Royal Bank v. Radio Philippines Network, Inc.*, G.R. No. 138510, October 10, 2002, 390 SCRA 608.

[21] *Id*.

[22] *Metropolitan Bank and Trust Company v. Cabilzo*, G.R. No. 154469, December 6, 2006, 510 SCRA 259.

[23] *Citytrust Banking Corporation v. Intermediate Appellate Court*, G.R. No. 84281, May 27, 1994, 232 SCRA 559; *Bank of the Philippine Islands v. Intermediate Appellate Court*, G.R. No. 69162, February 21, 1992, 206 SCRA 408.

drawer's accounts only the payables authorized by the latter. Otherwise, the drawee will be violating the instructions of the drawer and **it shall be liable for the amount charged to the drawer's account.**[24]

In the case at bar, respondents-spouses were the bank's depositors. The checks were drawn against respondents-spouses' accounts. PNB, as the drawee bank, had the responsibility to ascertain the regularity of the indorsements, and the genuineness of the signatures on the checks before accepting them for deposit. Lastly, PNB was obligated to pay the checks in strict accordance with the instructions of the drawers. Petitioner miserably failed to discharge this burden.

The checks were presented to PNB for deposit by a representative of PEMSLA absent any type of indorsement, forged or otherwise. The facts clearly show that the bank did not pay the checks in strict accordance with the instructions of the drawers, respondents-spouses. Instead, it paid the values of the checks not to the named payees or their order, but to PEMSLA, a third party to the transaction between the drawers and the payees.

Moreover, PNB was negligent in the selection and supervision of its employees. The trustworthiness of bank employees is indispensable to maintain the stability of the banking industry. Thus, banks are enjoined to be extra vigilant in the management and supervision of their employees. In *Bank of the Philippine Islands v. Court of Appeals*,[25] this Court cautioned thus:

> Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.[26]

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[24] *Associated Bank v. Court of Appeals,* G.R. Nos. 107382 & 107612, January 31, 1996, 252 SCRA 620, 631.

[25] G.R. No. 102383, November 26, 1992, 216 SCRA 51.

[26] *Bank of the Philippine Islands v. Court of Appeals, id.* at 71.

PNB's tellers and officers, in violation of banking rules of procedure, permitted the invalid deposits of checks to the PEMSLA account. Indeed, when it is the gross negligence of the bank employees that caused the loss, the bank should be held liable.[27]

PNB's argument that there is no loss to compensate since no demand for payment has been made by the payees must also fail. Damage was caused to respondents-spouses when the PEMSLA checks they deposited were returned for the reason "Account Closed." These PEMSLA checks were the corresponding payments to the Rodriguez checks. Since they could not encash the PEMSLA checks, respondents-spouses were unable to collect payments for the amounts they had advanced.

A bank that has been remiss in its duty must suffer the consequences of its negligence. Being issued to named payees, PNB was duty-bound by law and by banking rules and procedure to require that the checks be properly indorsed before accepting them for deposit and payment. In fine, PNB should be held liable for the amounts of the checks.

One Last Note

We note that the RTC failed to thresh out the merits of PNB's cross-claim against its co-defendants PEMSLA and MPC. The records are bereft of any pleading filed by these two defendants in answer to the complaint of respondents-spouses and cross-claim of PNB. The Rules expressly provide that failure to file an answer is a ground for a declaration that defendant is in default.[28] Yet, the RTC failed to sanction the failure of both PEMSLA

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[27] *Id.* at 77.

[28] Rules of Civil Procedure, Rule 9, Sec. 3. *Default: declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

and MPC to file responsive pleadings. Verily, the RTC dismissal of PNB's cross-claim has no basis. Thus, this judgment shall be without prejudice to whatever action the bank might take against its co-defendants in the trial court.

To PNB's credit, it became involved in the controversial transaction not of its own volition but due to the actions of some of its employees. Considering that moral damages must be understood to be in concept of grants, not punitive or corrective in nature, We resolve to reduce the award of moral damages to ₱50,000.00.[29]

WHEREFORE, the appealed Amended Decision is *AFFIRMED with the MODIFICATION* that the award for moral damages is reduced to ₱50,000.00, and that this is without prejudice to whatever civil, criminal, or administrative action PNB might take against PEMSLA, MPC, and the employees involved.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174649. September 26, 2008]

LEOPOLDO JEREMIAS, HEIRS OF RUBEN VIÑAS, as follows: RANDY C. VIÑAS, RAFAEL C. VIÑAS, MARICEL V. JAVIER, RAUL C. VIÑAS and VANEZA V. CERES, *petitioners, vs.* **THE ESTATE OF THE LATE IRENE P. MARIANO represented by its Administrator DANILO DAVID S. MARIANO,** *respondent.*

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[29] *Morales v. Court of Appeals,* G.R. No. 117228, June 19, 1997, 274 SCRA 282.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY; ESSENTIAL REQUISITES. — Tenancy relationship arises if all the following essential requisites are present: 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy must first be proved in order to entitle the claimant to security of tenure.

2. ID.; ID.; AGRICULTURAL TENANCY ACT OF THE PHILIPPINES; TENANT, DEFINED. — A tenant has been defined under Section 5(a) of Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, as a person who, himself, and with the aid available from within his immediate farm household, cultivates the land belonging to or possessed by another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold system.

3. REMEDIAL LAW; EVIDENCE; SELF-SERVING STATEMENTS REGARDING TENANCY RELATIONS COULD NOT ESTABLISH THE CLAIMED RELATIONSHIP; CONCRETE EVIDENCE ON THE RECORD THAT IS ADEQUATE TO PROVE THE ELEMENT OF SHARING MUST BE PRESENTED. — This Court had once ruled that self-serving statements regarding tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Substantial evidence entails not only the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must also be concrete evidence on record that is adequate to prove the element of sharing. In fact, this Court likewise ruled that to prove sharing

of harvests, a receipt or any other evidence must be presented; self-serving statements are deemed inadequate.

4. ID.; ID.; SELF-SERVING EVIDENCE; AN UNSIGNED HANDWRITTEN LETTER IS MERE SELF-SERVING WHICH SHOULD BE REJECTED AS EVIDENCE WITHOUT ANY RATIONAL PROBATIVE VALUE, EVEN IN ADMINISTRATIVE PROCEEDINGS. — Ruben's evidence is likewise remotely substantial. The hand-written letter dated 14 May 1989 allegedly instituting Ruben as tenant is unsigned. This Court has ruled that the unsigned handwritten documents and unsigned computer printouts, which are unauthenticated, are unreliable. This is mere self-serving evidence, which should be rejected as evidence without any rational probative value, even in administrative proceedings. The letter presented by Ruben, being unsigned, falls within this category of evidence. It hardly has any probative value; hence, it barely bolsters his hypothesis.

5. ID.; ID.; ADDITIONAL EVIDENCE MAY BE OFFERED ON APPEAL AND THE SAME MAY BE ADMITTED IN ADMINISTRATIVE PROCEEDINGS; CASE AT BAR. — The basic precept in this jurisdiction is that in administrative proceedings, such as the instant case, administrative agencies are not bound by the technical rules of procedure and evidence in the adjudication of cases. Offering additional evidence on appeal and admitting the same in administrative proceedings has been sanctioned by this Court. In this case, as respondent was able to present the signed and approved subdivision plans issued by the Bureau of Lands before the DARAB, said evidence can be fully considered in resolving the instant case.

6. ID.; ID.; PUBLIC DOCUMENTS; SUBDIVISION PLANS, BEING PUBLIC DOCUMENTS, ARE ENTITLED TO A PRESUMPTION OF TRUTH AS TO THE RECITALS CONTAINED THEREIN. — What is glaring in the subdivision plans of TCTs No. 6886 and No. 6887, which are public documents, are the annotations therein stating that the lots occupied by Ruben and Leopoldo are untenanted. The subdivision plans, being public documents, are entitled to a presumption of truth as to the recitals contained therein. Since the subdivision plans state that the lots occupied by Ruben and Leopoldo are not tenanted, a high degree of proof is needed to overthrow the presumption of truth contained in said

subdivision plans. This is pursuant to the rule that entries in official records made in the performance of duty by a public officer are *prima facie* evidence of the truth of the facts therein stated. The evidentiary nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity.

7. ID.; ID.; CREDIBILITY; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES OVER MATTERS FALLING UNDER THEIR JURISDICTION ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY, BY THE COURTS. — Well-settled is the principle that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. Since specialized government agencies tasked to determine the classification of parcels of land, such as the Bureau of Lands, has already certified that the subject land is untenanted, the Court must accord such conclusions great respect, if not finality, in the absence of evidence to the contrary.

8. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW (PRESIDENTIAL DECREE NO. 27); APPLICABILITY. — Presidential Decree No. 27 provides: *This shall apply to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease-tenancy, whether classified as landed estate or not.* For lands to fall under the coverage of the said law, the same must be tenanted private agricultural lands. Thus, in *Daez v. Court of Appeals*, the Court said that Presidential Decree No. 27 would not apply if: (1) the land is not devoted to rice or corn crops even if it is tenanted; or (2) the land is untenanted even though it is devoted to rice or corn crops.

9. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; TO OVERCOME THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL FUNCTIONS IN FAVOR OF PUBLIC OFFICIALS, THE EVIDENCE AGAINST IT MUST BE CLEAR AND CONVINCING. — The geodetic engineers of the Bureau of Lands who conducted the survey were presumed to have performed their official duty. To

overcome the presumption of regularity of performance of official functions in favor of such officials, the evidence against it must be clear and convincing. Petitioners having been unable to come forward with the requisite quantum of proof to the contrary, the presumption of regularity of performance on the part of the geodetic engineers in the case stands.

APPEARANCES OF COUNSEL

Adan Marcelo B. Botor for petitioners.
Marcelino B. Jornales 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 13 October 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 84806 which reversed the Decision of the Department of Agrarian Reform Adjudication Board (DARAB) and reinstated the Decision of the Provincial Agrarian Reform Adjudicator (PARAD).

Irene P. Mariano (Irene), a widow, owned two parcels of land located at Barangay Balatas, Naga City, Camarines Sur, covered by Transfer Certificates of Title (TCTs) No. 6886 and No. 6887 with an aggregate area of 270,203 square meters or a little more than 27 hectares. The land covered by TCT No. 6886 has an area of 209,422 square meters (20.9422 hectares) while the land covered under TCT No. 6887 contains an area of 60,781 square meters (6.0781 hectares).[2]

In 1972, the said parcels of land were placed under the Operation Land Transfer program pursuant to Presidential Decree No. 27, and accordingly, the tenanted portion of the landholdings were subdivided among identified tenant-beneficiaries, and a

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[1] Penned by Associate Jose L. Sabio, Jr. with Associate Justices Jose C. Mendoza and Arturo G. Tayag, concurring. *Rollo*, pp. 31-43.

[2] Records, pp. 1-2, CA *rollo*, p. 61.

subdivision plan was made. One of the more than 40[3] tenant-beneficiaries of the two titled properties of Irene P. Mariano, who were already given emancipation patents, was Santiago Jeremias, father of petitioner Leopoldo Jeremias (Leopoldo), whose apportionments consisted of three lots within TCT No. 6887, namely, Lots No. 1B3F, No. 1B3G, and No. 1B3R.

On 26 June 1988, Irene P. Mariano died intestate and was succeeded by her two children, Jose P. Mariano and Erlinda M. Villanueva.

In an unsigned hand-written letter dated 14 May 1989, Helen S. Mariano, wife of heir Jose P. Mariano, and despite the fact that the estate of the late Irene Mariano remained unpartitioned and still under intestate proceedings, allegedly instituted Ruben Viñas (Ruben) as a tenant on Lots No. 25 and No. 48 of TCT No. 6886, to wit:

TO WHOM IT MAY CONCERN:

Received from Ruben Biñas, 95 kilos of rice or more or less, 6 cavans of *palay* for this present harvest 2nd cropping/dry season for 1989.

And we received again from Ruben Biñas 47 kilos of rice or more or less 7 cavans of *palay* for the first cropping/wet season for 1988.

This relation of ours became possible by reason of Ruben Viñas' negotiation with the landowner, Jose P. Mariano, for reason that he (Ruben Viñas) does not want his family to be hungry. Because of this we know and we have consented for him to work or farm his presently farmed area. We gave him that chance until such time when we shall need the farm for which he will voluntarily surrender to us.

Jose P. Mariano

By Helen S. Mariano[4]

Sometime in 1991, Danilo David P. Mariano (Danilo) was appointed as administrator of respondent Estate of Irene P. Mariano.

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[3] *Id.* at 84-85.

[4] This is the translation of petitioners of the original letter written in Bicolano. (Records, p. 50.)

On 14 April 1994 respondent Estate, through its administrator Danilo, lodged before the PARAD two separate complaints for ejectment and damages against Leopoldo and Ruben, docketed as PARAD Cases No. v-94-023 and No. v-94-024, respectively.

In the complaint against Leopoldo, respondent Danilo averred that sometime in July 1993, he discovered that the former entered Lots No. 1B3D, No. 1B3E, No. 1B3H and No. 1B3Q, which lands were inside the Estate's landholding covered by TCT No. 6887, and planted various agricultural products, without his knowledge and consent. Respondent Danilo further alleged that Leopoldo was not a tenant of Irene. It was his father, Santiago Jeremias, who was her tenant in Lots No. 1B3F, No. 1B3G, and No. 1B3R, which are also inside the property covered by TCT No. 6887. After Leopoldo's refusal to vacate said lots despite oral and formal demands, respondent made a formal complaint for ejectment with the Barangay Agrarian Reform Council (BARC), which proved futile since the parties failed to amicably settle the case.

In his answer, Leopoldo denied he unlawfully entered Lots No. 1B3D, No. 1B3E, No. 1B3H and No. 1B3Q. He claimed that he cultivated and farmed these lots upon the permission and tolerance of Irene P. Mariano, the registered owner. He likewise averred that being the son of Santiago Jeremias, the tenant of Irene P. Mariano, he lawfully acquired the right to cultivate said lots by virtue of succession.

In the case against Ruben Viñas (Ruben), respondent Danilo alleged that in June 1993, he came to know of the fact of Ruben's intrusion and cultivation of Lots No. 25 and No. 48 which are within the landholding covered by TCT No. 6886. When respondent made verbal and formal demands for Ruben to vacate the areas, the latter declined to heed the demands. Ruben, on the other hand, answered that his cultivation of the areas was pursuant to a hand-written letter of Helen S. Mariano instituting him as a tenant of said lots.

In both cases, respondent claimed that the lots in question were the Estate's retained property since these were not tenanted as evidenced by the subdivision plan attached to the complaints.

Since the two ejectment cases involved only one complainant, the PARAD jointly considered the same. In its joint decision dated 6 December 1994, the PARAD ruled in favor of the respondent and ordered Leopoldo and Ruben to vacate the subject lots. It opined that Leopoldo's right to succeed his father as tenant covered only the lots allotted to his father which were Lots No. 1B3F, No. 1B3G, and No. 1B3R. According to the PARAD, since Leopoldo failed to adduce evidence that he obtained the consent of the owner to till Lots No. 1B3D, No. 1B3E, No. 1B3H and No. 1B3Q, Leopoldo's occupation of said lands was illegal. It likewise declared that the alleged institution of Ruben as tenant was not enough proof that he was authorized to cultivate Lots No. 25 and No. 48. First, the letter of authority did not state that Ruben was authorized to specifically till Lots No. 25 and No. 48. Second, the letter contained a proviso stating that Ruben would vacate the premises in case the landowner would need the land. Lastly, the PARAD believed that the subject lots were not covered by Presidential Decree No. 27 since the same were under owner-cultivatorship or untenanted which made them beyond the grasp of the said statute. The decretal portion of the PARAD decision reads:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiff; ordering defendant Leopoldo Jeremias to vacate lot Nos. 1B3D, 1B3E, 1B3H and 1B3Q within TCT No. 6887 and defendant Ruben Viñas to vacate Lot Nos. 25 and 48 within TCT No. 6886 and to peacefully turn over the physical possession to herein plaintiff thru the authorized administrator Danilo David Mariano.[5]

On 19 December 1994, Leopoldo and Ruben filed a notice of appeal with the PARAD. In their Appellants' Brief before the DARAB, they assailed the PARAD's reliance on the subdivision plan in ruling that the lots that were the subject matter of the controversy were not tenanted. They asserted that the PARAD should not take all the annotations in the subdivision plan as the absolute truth, since they were not privy to its preparation; there was a possibility therefore, that they

[5] CA *rollo*, p. 62.

were not notified by the authorities of the date of the survey; hence, it could happen that the lots they tilled as tenants were not identified or listed in their names.

Leopoldo lamented the PARAD's failure to give weight to the receipts of rentals and certification from the Land Bank of the Philippines in his favor. Although these receipts and certifications did not indicate the farm lots the payments pertained to, he insisted that such doubt must be resolved in his favor in line with the constitutional and agrarian statutes mandate that interpretation must be on the tenant's side.

For his part, Ruben stressed that the proviso in the letter instituting him as tenant in Lots No. 25 and No. 48, which stipulated that he would vacate the same was neither legal nor binding on him since it violated Section 49[6] of Republic Act No. 1199,[7] otherwise known as the Agricultural Tenancy Act of 1954.

On 8 August 1997, the DARAB promulgated its decision which favored Leopoldo and Ruben, by reversing and setting aside the PARAD decision. Under the belief that all the lots of respondent Estate's landholdings covered under TCTs No. 6886 and No. 6887 were tenanted, the DARAB was of the opinion that respondent could not claim that the disputed lots (within TCTs No. 6886 and No. 6887) could not be legally retained by respondent Estate, since the area of respondent's landholdings exceeded 24 hectares; and under Presidential Decree No. 27, landowners are not entitled to retention if they own more than 24 hectares of rice and corn lands.

The DARAB said that even if respondent merely owned tenanted rice and corn land totaling less than 24 hectares, still it had no right of retention, since he had other lands used for

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[6] Section 49. *Ejectment of Tenant.* — Notwithstanding any agreement or provision of law as to the period, in all cases where land devoted to any agricultural purpose is held under any system of tenancy, the tenant shall not be dispossessed of his landholdings except for any of the causes hereinafter enumerated and only after the same has been proved before, and the dispossession is authorized by, the court.

[7] It took effect on 30 August 1954.

residential, commercial and other urban purposes wherein it derived sufficient income to support itself. Under Administrative Order No. 4, Series of 1991, a supplemental guideline of Presidential Decree No. 27, the right of retention cannot be had by a landowner even if he has less than 24 hectares of rice and corn lands if he additionally owns lands for residential, commercial, industrial or urban purposes, from which he derives adequate income to support himself and his family. The DARAB considered the subdivision plan as a mere scrap of paper, and it could not be used as evidence, because said document was not signed by the approving officer who made it. Moreover, the DARAB ruled that the letter signed by Mrs. Helen Mariano, the wife of Jose Mariano, a co-owner of the subject lots, effectively made Ruben a lawful possessor and cultivator. The DARAB explained that since Helen Mariano signed on behalf of her husband, the principal, then she became the agent of her husband. Considering that the husband did not repudiate the act of Helen Mariano, such agency subsists. Hence, the institution of Ruben to till the lots in question must be respected.

On 16 September 1997, respondent filed a motion for reconsideration of the DARAB's decision. On 5 May 2004, respondent filed a supplemental motion for reconsideration wherein it submitted to the DARAB the approved copy of the subdivision plan, which had no marked difference with that which was unapproved and attached to the complaints.

On 3 June 2004, the DARAB issued a resolution denying the motions of respondent, reasoning that the matters raised therein had already been passed upon in the decision.

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

The Court of Appeals, on 13 October 2005, promulgated a decision in favor of respondent. It reversed and set aside the verdict of the DARAB and reinstated the decision of the PARAD, thus:

WHEREFORE, premises considered and pursuant to applicable law and jurisprudence on the matter, the present Petition is hereby

GRANTED. Accordingly, the appealed Decision of the Department of Agrarian Reform Adjudication Board-Central Office, Elliptical Road, Diliman, Quezon City x x x is hereby REVERSED and SET ASIDE and a new one entered — REINSTATING the decision of the Department of Agrarian Reform Adjudication Board-Office of the Provincial Agrarian Reform Adjudicator x x x.[8]

Leopoldo filed a motion for reconsideration. Ruben's counsel filed a Manifestation informing the Court of Appeals of Ruben's demise and requesting that the named Heirs of Ruben Viñas (Heirs of Ruben) be entered in substitution of the deceased. The manifestation likewise prayed that in lieu of filing a motion for reconsideration, the Heirs of Ruben are adopting the motion for reconsideration of Leopoldo. In a resolution dated 22 August 2006, the Court of Appeals denied the motion for reconsideration filed by Leopoldo and the Heirs of Ruben.

Hence, the instant petition jointly filed by Leopoldo and the Heirs of Ruben on the basic issue of whether or not they are tenants of the lands belonging to respondent and, consequently, entitled to security of tenure.

To support his stance, Leopoldo maintains that he cultivated Lots No. 1B3D, No. 1B3E, No. 1B3H and No. 1B3Q since the 1960's with the consent and permission of the late Irene P. Mariano. The Heirs of Ruben are of the posture that Ruben became a tenant of Lots No. 25 and No. 48 pursuant to a written letter instituting him as such.

Tenancy relationship arises if all the following essential requisites are present:

1) that the parties are the landowner and the tenant or agricultural lessee;

2) that the subject matter of the relationship is an agricultural land;

3) that there is consent between the parties to the relationship;

4) that the purpose of the relationship is to bring about agricultural production;

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[8] *Rollo*, p. 42.

5) that there is personal cultivation on the part of the tenant or agricultural lessee; and

6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[9]

Claims that one is a tenant do not automatically give rise to security of tenure.[10] The elements of tenancy must first be proved in order to entitle the claimant to security of tenure.[11]

A tenant has been defined under Section 5(a) of Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, as a person who, himself, and with the aid available from within his immediate farm household, cultivates the land belonging to or possessed by another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold system.

This Court had once ruled that self-serving statements regarding tenancy relations could not establish the claimed relationship.[12] The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy.[13] Substantial evidence entails not only the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must also be concrete evidence on record that is adequate to prove the element of sharing.[14] In fact, this Court likewise ruled that to prove sharing of harvests, a receipt or any other evidence must be presented; self-serving statements are deemed inadequate.[15]

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[9] *Cornes v. Leal Realty Centrum Co., Inc.*, G.R. No. 172146, 30 July 2008.

[10] *Valencia v. Court of Appeals*, 449 Phil. 711, 736 (2003).

[11] *Id*.

[12] *Berenguer, Jr. v. Court of Appeals*, G.R. No. 60287, 17 August 1988, 164 SCRA 431, 439.

[13] *Id*.

[14] *Id*.

[15] *Bejasa v. Court of Appeals*, 390 Phil. 499, 508 (2000).

In this case, there is no substantial evidence that the petitioners were installed by the owner of the lots in question as agricultural tenants on the property. There is, likewise, no evidence that the petitioners shared with the landowner the harvest and/or produce from the landholding.

There is no question that Leopoldo is a tenant on 3 landholdings — *i.e.*, Lots No. 1B3F, No. 1B3G, and No. 1B3R — by being the successor of the late Santiago Jeremias; however, there is no shred of evidence that he was designated tenant of the late Irene in the contested 4 parcels of land, Lots No. 1B3D, No. 1B3E, No. 1B3H and No. 1B3Q. Even Leopoldo's father, the undisputed tenant of Irene, had never been instituted as a tenant of the four subject lands. Evidently, Leopoldo's right to succeed his father as tenant embraces only the three landholdings his father cultivated. There is no evidence on record, other than the self-serving declaration of Leopoldo and his witnesses, that indeed, the landowner had authorized him to till the disputed lots. Leopoldo's failure to adduce a significant morsel of evidence that he was authorized as an agricultural tenant of the contested lands makes his supposition — that he has legal right to work on the said lands — frail and empty. This makes him a usurper, devoid of any right to remain in the premises of the properties in question.

Ruben's evidence is likewise remotely substantial. The handwritten letter dated 14 May 1989 allegedly instituting Ruben as tenant is unsigned. This Court has ruled that the unsigned handwritten documents and unsigned computer printouts, which are unauthenticated, are unreliable.[16] This is mere self-serving evidence, which should be rejected as evidence without any rational probative value, even in administrative proceedings.[17] The letter presented by Ruben, being unsigned, falls within this category of evidence. It hardly has any probative value; hence, it barely bolsters his hypothesis.

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[16] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, 11 November 2005, 474 SCRA 761, 776-777.

[17] *Id*.

In contrast, respondent Estate presents a public document, the Subdivision Plan of respondent's lands covered under TCTs No. 6886 (Annex "D") and No. 6887 (Annex "C"), to advance its position that Leopoldo and Ruben are not its tenants. Although the unsigned subdivision plans presented by respondent Estate before the PARAD were evidence brushed aside by the DARAB as mere scraps of paper, reasoning that the same were not signed by the proper authorities, respondent nonetheless was able to submit before the DARAB the signed subdivision plans. The basic precept in this jurisdiction is that in administrative proceedings, such as the instant case, administrative agencies are not bound by the technical rules of procedure and evidence in the adjudication of cases.[18] Offering additional evidence on appeal and admitting the same in administrative proceedings has been sanctioned by this Court.[19] In this case, as respondent was able to present the signed and approved subdivision plans issued by the Bureau of Lands before the DARAB, said evidence can be fully considered in resolving the instant case.

What is glaring in the subdivision plans of TCTs No. 6886 and No. 6887, which are public documents, are the annotations therein stating that the lots occupied by Ruben and Leopoldo are untenanted. The subdivision plans, being public documents, are entitled to a presumption of truth as to the recitals contained therein.[20] Since the subdivision plans state that the lots occupied by Ruben and Leopoldo are not tenanted, a high degree of proof is needed to overthrow the presumption of truth contained in said subdivision plans. This is pursuant to the rule[21] that entries in official records made in the performance of duty by a public officer are *prima facie* evidence of the truth of the

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[18] *IBM Philippines, Inc. v. National Labor Relations Commission*, 365 Phil. 137, 148 (1999).

[19] *Id*.

[20] *People v. Fabro*, 342 Phil. 708, 727 (1997).

[21] Section 44, Rule 130 of the Rules of Court provides: "Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated."

facts therein stated.[22] The evidentiary nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity. It also bears stressing that the Bureau of Lands, an agency of the executive branch tasked with the classification of lands, issued the subdivision plans certifying that the disputed lots were not tenanted. The Bureau arrived at the conclusion that the said lands were untenanted after it conducted a survey on 5 September 1985.

Well-settled is the principle that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts.[23] Since specialized government agencies tasked to determine the classification of parcels of land, such as the Bureau of Lands, has already certified that the subject land is untenanted, the Court must accord such conclusions great respect, if not finality, in the absence of evidence to the contrary.

Presidential Decree No. 27 provides: *This shall apply to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease-tenancy, whether classified as landed estate or not*. For lands to fall under the coverage of the said law, the same must be tenanted private agricultural lands. Thus, in *Daez v. Court of Appeals*,[24] the Court said that Presidential Decree No. 27 would not apply if: (1) the land is not devoted to rice or corn crops even if it is tenanted; or (2) the land is untenanted even though it is devoted to rice or corn crops.

There is no question that Irene's landholdings with a total area of a little more than 27 hectares, of which the disputed lots form a part, were subjected to agrarian reform in 1972

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[22] *Heirs of Pedro Cabais v. Court of Appeals*, 374 Phil. 681, 688 (1999).

[23] *Bulilan v. Commission on Audit*, 360 Phil. 626, 634 (1998), citing *Villaflor v. Court of Appeals*, 345 Phil. 524, 562 (1997).

[24] 382 Phil. 742, 751 (2000).

under Presidential Decree No. 27. However, it is also established by the records of the case that disputed lots were classified as untenanted by the Bureau of Lands. This important piece of evidence, absent any substantial evidence to the contrary, only leads to the conclusion that the lots which are the subject matter of the controversy are beyond the pale of the said statute.

The petitioners try to salvage their cause by arguing that there is a possibility that the disputed lots were not identified in their names since they were not notified of the survey conducted by the authorities. This argument is specious. The geodetic engineers of the Bureau of Lands who conducted the survey were presumed to have performed their official duty. To overcome the presumption of regularity of performance of official functions in favor of such officials, the evidence against it must be clear and convincing. Petitioners having been unable to come forward with the requisite quantum of proof to the contrary, the presumption of regularity of performance on the part of the geodetic engineers in the case stands. Besides, if indeed they were tilling the disputed lands, it is unlikely that the survey conducted by the Bureau of Lands escaped petitioners' attention. Land surveys take a long time to accomplish especially in this case in which vast tracts of lands are involved, and considering further that said lands were subdivided into more than 40 small lots for the farmer-beneficiaries of Irene Mariano. The only plausible explanation for the exclusion of petitioners as tenants of the disputed lots is that they were never tenants thereof.

While this Court may commiserate with the plight of Leopoldo and the heirs of Ruben, this Court cannot sanction their intrusion into the properties of the respondent without violating the laws and established jurisprudence. And while it is the declared duty of this Court to protect the weak and those who have less in life, such duty should not be utilized to trample on the rights of the landowners whenever truth and justice happen to be on their side.[25] As aptly articulated in *Gelos v. Court of Appeals*:

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[25] *Land Bank of the Philippines v. Court of Appeals,* G.R. No. 118712, 6 October 1995, 249 SCRA 149, 161.

[S]ocial justice — or any justice for that matter — is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[26]

WHEREFORE, the Decision of the Court of Appeals dated 13 October 2005 in CA-G.R. SP No. 84806, reinstating the decision of the Provincial Agrarian Reform Adjudicator of Camarines Sur, is hereby *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180557. September 26, 2008]

HEIRS OF ROQUE F. TABUENA, represented by AURORA P. TABUENA, ESTER P. TABUENA and ERLINDA T. MARCELLANA, HEIRS OF JOSE TABUENA, represented by MA. LUZ T. MACASINAG, HEIRS OF ROMULO TABUENA, represented by MILAGROS ARROYO, HEIRS OF BENJAMIN TABUENA, represented by MA. VICTORIA TABUENA, and RAFAELA ROSARIO ESGUERRA, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

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[26] *Gelos v. Court of Appeals*, G.R. No. 86186, 8 May 1992, 208 SCRA 608, 616.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; EFFECT OF ABSENCE OF FORMAL OFFER; EXCEPTION. — Generally, courts cannot consider evidence which has not been formally offered. Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified. However, this Court has relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the same must have been identified by testimony duly recorded and incorporated in the records of the case.

2. ID.; CIVIL PROCEDURE; ACTION OR DEFENSE BASED ON DOCUMENT; FAILURE TO SPECIFICALLY DENY UNDER OATH THE EXISTENCE, AUTHENTICITY AND DUE EXECUTION OF THE DOCUMENT IS TANTAMOUNT TO A JUDICIAL ADMISSION OF ITS GENUINENESS AND DUE EXECUTION; CASE AT BAR. — In the instant case, the Deed of Assignment of Rights was set up by LBP as an affirmative defense in its Answer and was incorporated in the records of the case as an annex. Petitioners however failed to question its existence or due execution. On the contrary, they acknowledged receipt of a portion of the compensation for the property and admitted that the Deed of Assignment of Rights appeared as an encumbrance in their certificate of title. Petitioners' failure to specifically deny under oath the existence, authenticity and due execution of the said document is tantamount to a judicial admission of its genuineness and due execution.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW; LAND BANK; PURPOSE OF ITS CREATION. — LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree

with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination. Once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins, which clearly shows that there would never be a judicial determination of just compensation absent respondent LBP's participation. Logically, it follows that respondent is an indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program; as such, it can file an appeal independently of DAR.

4. CIVIL LAW; ESTOPPEL; AVAILABLE AGAINST PETITIONERS IN CASE AT BAR. — Moreover, by virtue of the Deed of Assignment of Rights executed by petitioners whereby they acknowledged receipt of the full compensation for their property and have assigned, transferred and conveyed their rights over the subject property to LBP, their claim for an increase in the valuation of such property has no basis. LBP's obligation had long been extinguished and settled. Except for their bare and general allegations of compulsion and duress in view of the fact that the Deed of Assignment of Rights was executed during the effectivity of Martial Law, petitioners have not presented any evidence to dispute the same. Hence, petitioners were estopped from assailing the validity of the said deed.

5. ID.; ID.; LACHES, DEFINED; ALL ELEMENTS THEREOF PRESENT IN CASE AT BAR. — Moreover, laches has set in due to petitioners' inaction for more than 20 years to assail the due execution of the Deed of Assignment of Rights. Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declines to assert it. All the elements of laches are present in the instant case. The subject property was acquired by the government by virtue of Presidential Decree No. 27 which took effect on October 21, 1972; the parties executed the Deed of Assignment of Rights on October 10, 1979; but it was only on September 28, 2000 that petitioners filed the action for determination and payment of just compensation.

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW; EXPROPRIATION PROCEEDINGS; DETERMINATION OF JUST COMPENSATION; REMEDY OF LANDOWNER IN CASE OF DISAGREEMENT WITH VALUATION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR). — Section 16 of Republic Act No. 6657 gives the landowner, in case he/she disagrees with valuation of the DAR, the following remedy, to wit: (f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

APPEARANCES OF COUNSEL

Macasinag Layosa Peralta Evan and Associates for petitioners.
LBP Legal Services Group for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition assails the July 11, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 88469 which reversed and set aside the October 1, 2004 Decision[2] of the Regional Trial Court of Sorsogon City, Branch 52 in Agrarian Case No. 2000-6767. Also assailed is the October 15, 2007 Resolution[3] which denied the motion for reconsideration.

The facts of the case as found by the Court of Appeals are as follows:

On September 28, 2000, respondents filed a complaint for determination and payment of just compensation against the Department of Agrarian Reform (DAR) and Land Bank of the

[1] *Rollo*, pp. 45-57; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[2] *Id.* at 101-108.

[3] *Id.* at 78-81.

Philippines (LBP), which was amended on October 3, 2000, alleging that they were the owners of Lot No. 6183, an irrigated riceland with an area of 29.9557 hectares located at Bibincahan, Sorsogon, Sorsogon; that 26.2585 hectares of said lot were brought by DAR under the coverage of P.D. No. 27 (The Comprehensive Agrarian Reform Law) and set the total value thereof at ₱105,572.48, excluding increments, in contravention of their right to a just compensation; and that the determination of what constitutes just compensation is inherently a judicial function which cannot and should not be left to administrative officials.

An amended answer was filed by DAR alleging that the determination of just compensation by the court is not necessary because respondents and the farmer-beneficiaries had already executed a Landowner-Tenant Production Agreement and Farmers Undertaking (LTPA-FU) To Pay to the LBP, whereby the parties agreed on the valuation of the riceland; and that in compliance with said agreement, the farmer-beneficiaries have already paid their land amortizations with LBP, as evidenced by a Certification dated July 18, 1980 issued by Mr. Ely Pongpong, Bank Executive Officer I.

A motion to dismiss was filed by LBP alleging that the case did not pass the Department of Agrarian Reform and Adjudication Board (DARAB), which has primary and exclusive original and appellate jurisdiction over the valuation of land, as well as the preliminary determination and payment of just compensation and disputes concerning the functions of LBP; that for failure to exhaust administrative remedies, the case is premature; and that respondents have no cause of action against it.

In an Order dated March 26, 2001, the court *a quo* found LBP's argument on non-exhaustion of administrative remedies to be meritorious and referred the case to the DARAB/PARAD for it to conduct a summary hearing for initial valuation process. However, the Provincial Adjudicator of Sorsogon informed the court *a quo* that the Preliminary Valuation and other pertinent papers have not yet been forwarded to the Board.

LBP then filed an answer alleging that the complaint states no cause of action because respondents already received the payment for their property in the form of cash and bonds and they executed documents evidencing payment of the property to their full satisfaction, such as the Assignment of Rights, Landowner's Affidavit of Warranty and Undertaking, Extrajudicial Settlement of Estate and

Waiver of Rights, Payment Release Forms, Special Power of Attorney and Delegation of Special Power of Attorney, copies of which, together with photocopies of the Case Registry Book and Bond Registry Book, were attached thereto as Annexes "A" to "G".

In their position paper, respondents admitted that they have already received the amount of ₱64,690.19 from the valuation of ₱105,572.48. However, they claimed that the valuation of ₱4,398.00 per hectare is unreasonable and shocking to the conscience and since they have not yet been fully paid for their property, they are still the owners thereof and can ask for an increase of the purchase price.

A position paper was filed by DAR alleging that respondents accepted the valuation of ₱15,572.48 and executed a Deed of Assignment of Rights and Landowner's Affidavit of Warranty and Undertaking, so that they are already estopped from asking for an increase in the purchase price.

LBP filed a position paper alleging that respondents are estopped from claiming an increase in the valuation on the grounds of payment and prescription, as more than twenty (20) years have lapsed from the time said valuation was made.

On October 1, 2004, the court *a quo* rendered judgment, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

1) Fixing the amount of FOUR MILLION EIGHT HUNDRED FIFTY-FIVE THOUSAND PESOS (PHP4,855,000.00) for the area of 26.0012 hectares, covered by TCT No. T-28473 in the name of the Heirs of Roque Tabuena of that Riceland situated at Baribag, Bibincahan, Sorsogon City which property was taken by the government pursuant to P.D. No. 27.

2) Ordering the defendant Land Bank of the Philippines to pay the Plaintiffs the total amount of Four Million Eight Hundred Fifty-Five Thousand Pesos (₱4,855,000.00) Philippine currency in the manner provided by law by way of the full payment of the said just compensation after deducting whatever amount previously received by the plaintiffs if any from the defendant Land Bank of the Philippines as part of the just compensation.

3) Ordering the plaintiffs to pay whatever deficiency in the docket fees to the Clerk of Court based on the valuation fixed by the Court.

4) Without pronouncement as to costs.

SO ORDERED."[4]

DAR and LBP filed separate motions for reconsideration[5] but were denied; thus, both filed petitions for review[6] before the Court of Appeals. However, DAR's petition was dismissed by the Court of Appeals in a Resolution dated August 26, 2005. An Entry of Judgment[7] was issued on September 23, 2005. Only LBP's Petition for Review[8] was considered by the appellate court.

LBP alleged that the subject land transfer claim had been settled and extinguished by virtue of the Deed of Assignment of Rights executed by petitioners in favor of LBP; that the said deed is the best evidence that the land transfer claim had been consummated; that since there has been no action on the part of petitioners to annul the same, they were estopped from assailing its validity; that the just compensation fixed by the trial court in the amount of ₱4,855,000.00 was improper since the valuation should be computed at the time of the taking of the property; that petitioners should have first availed of the administrative proceedings before the DAR which has primary jurisdiction over the case; and that it is only after the landowner had disagreed with the valuation of the DAR that he can file a case before the courts for final determination of just compensation.

Petitioners claimed that their acceptance of the offered price does not estop them from questioning the valuation since the Deed of Assignment of Rights is not conclusive proof that their

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[4] *Id.* at 46-49; citations omitted.

[5] Records, Vol. I, pp. 268-273; 275-288.

[6] Records, Vol. II, pp. 1-18 & 41-67.

[7] *Id.* at 154.

[8] CA *rollo*, pp. 12-39.

claim was extinguished; that the trial court did not err in fixing just compensation in the amount of ₱4,855,000.00 since the actual taking of the land would take effect only upon the payment of just compensation.

On July 11, 2007, the appellate court rendered the assailed Decision reversing and setting aside the decision of the trial court and dismissing the complaint for determination and payment of just compensation. The Court of Appeals ruled that although the Deed of Assignment of Rights was not formally offered by the respondent, the same was incorporated in the records of the case; moreover, petitioners failed to deny it under oath hence, its genuineness and due execution are deemed admitted; that since petitioners executed a Deed of Assignment of Rights and acknowledged receipt of the full compensation for the property, there is no need to bring the matter to the trial court for the determination and payment of just compensation; that petitioners' cause of action has prescribed since the action for determination and payment of just compensation was filed only after 20 years from the time its valuation has been fixed by DAR; that in computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of the judgment, that should be taken into consideration.

Petitioners' motion for reconsideration[9] was denied; hence, the instant petition for review on *certiorari*.

Petitioners contend that the appellate court erred when it admitted the Deed of Assignment of Rights considering that the said document was not offered in evidence by respondent; that petitioners were not given the opportunity to examine the same or to object to its admissibility; that assuming that the said deed may be admitted in evidence, it could not be considered as a binding contract because they executed the same under duress.

The petition lacks merit.

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[9] Records, Vol. II, pp. 221-235.

Generally, courts cannot consider evidence which has not been formally offered. Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[10] However, this Court has relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the same must have been identified by testimony duly recorded and incorporated in the records of the case.[11]

In the instant case, the Deed of Assignment of Rights[12] was set up by LBP as an affirmative defense in its Answer and was incorporated in the records of the case as an annex.[13] Petitioners however failed to question its existence or due execution. On the contrary, they acknowledged receipt of a portion of the compensation for the property[14] and admitted that the Deed of Assignment of Rights appeared as an encumbrance in their certificate of title.[15] Petitioners' failure to specifically deny under oath the existence, authenticity and due execution of the said document is tantamount to a judicial admission of its genuineness and due execution.[16] Sections 7 and 8, Rule 8 of the Rules of Court provide:

SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in

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[10] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, 502 SCRA 87, 90.

[11] *Ramos v. Dizon*, G.R. No. 137247, August 7, 2006, 498 SCRA 17, 31.

[12] CA *rollo*, pp. 114-117.

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

[14] *Id.* at 208.

[15] *Id.* at 207.

[16] *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, 406 SCRA 190, 263.

the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

SEC. 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

There is likewise no merit in petitioners' allegation that LBP lacks *locus standi* since DAR's petition for review was dismissed by the Court of Appeals and said dismissal has become final and executory; that being a necessary party and not an indispensable party, LBP has no right to appeal unless the DAR appeals.

LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844[17] and Section 64 of RA No. 6657.[18] It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program.[19] It may agree with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination.[20]

Once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable

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[17] Agricultural Land Reform Code.

[18] An Act Constituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes.

[19] Section 15, E.O. No. 228 (CREATING THE PRESIDENTIAL EMERGENCY EMPLOYMENT OFFICE, DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES).

[20] R.A. No. 6657; Sec. 16.

role of LBP begins,[21] which clearly shows that there would never be a judicial determination of just compensation absent respondent LBP's participation. Logically, it follows that respondent is an indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program;[22] as such, it can file an appeal independently of DAR.

Moreover, by virtue of the Deed of Assignment of Rights executed by petitioners whereby they acknowledged receipt of the full compensation for their property and have assigned, transferred and conveyed their rights over the subject property to LBP, their claim for an increase in the valuation of such property has no basis. LBP's obligation had long been extinguished and settled. Except for their bare and general allegations of compulsion and duress in view of the fact that the Deed of Assignment of Rights was executed during the effectivity of Martial Law, petitioners have not presented any evidence to dispute the same. Hence, petitioners were estopped from assailing the validity of the said deed.

Moreover, laches has set in due to petitioners' inaction for more than 20 years to assail the due execution of the Deed of Assignment of Rights. Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declines to assert it.[23] All the elements of laches are present in the instant case. The subject property was acquired by the government by virtue of Presidential Decree No. 27 which took effect on October 21, 1972; the parties executed the Deed of Assignment of Rights on October 10, 1979; but it was only on September 28, 2000

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[21] *Gabatin v. Land Bank of the Philippines*, G.R. No. 148223, November 25, 2004, 444 SCRA 176, 186.

[22] *Id*. at 188.

[23] *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616, 635.

that petitioners filed the action for determination and payment of just compensation.

Moreover, Section 16 of Republic Act No. 6657 gives the landowner, in case he/she disagrees with valuation of the DAR, the following remedy, to wit:

SECTION 16. *Procedure for Acquisition of Private Lands*. - For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the land-owners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Section 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery of registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection of failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request

the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation. (Underscoring ours)

In *Apo Fruits Corporation v. Court of Appeals*,[24] this Court ruled that:

AFC and HPI now blame LBP for allegedly incurring delay in the determination and payment of just compensation. However, the same is without basis as AFC and HPI's *proper recourse after rejecting the initial valuations of respondent LBP was to bring the matter to the RTC acting as a SAC, and not to file two complaints for determination of just compensation with the DAR, which was just circuitous as it had already determined the just compensation of the subject properties taken with the aid of LBP*. (Underscoring ours)

Besides, Rule XIII, Section 11 of the New Rules of Procedure of the DARAB provides thus:

Section 11. Land Valuation and Preliminary Determination and Payment of Just Compensation. The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration. (Underlining for emphasis)[25]

Finally, there is no basis to petitioners' allegation that they were not yet fully paid of the valuation. The Deed of Assignment of Rights[26] executed by petitioners and respondent clearly provided that:

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[24] G.R. No. 164195, December 19, 2007, 541 SCRA 117, 141.

[25] *Land Bank of the Philippines v. Wycoco*, G.R. Nos. 140160 & 146733, January 13, 2004, 419 SCRA 67, 75.

[26] CA *rollo*, p. 115.

WHEREAS, the Land Bank has by these presents satisfactorily paid and settled in my/our favor the net cost or value of the above-described landholdings in the mode provided under Presidential Decree No. 251 as follows:

CASH: TWELVE THOUSAND SEVENTEEN PESOS & 53/100 (₱12,017.53)

BONDS: NINETY SEVEN THOUSAND PESOS ONLY (₱97,000.00)

which settlement/payment is in full compensation of the cost of said landholding (s) and which I/we hereby acknowledge to have received from the Land Bank to my/our full satisfaction.

WHEREAS, pursuant to the said Presidential Decree No. 251, whenever the Land Bank pays the whole or a portion of the total cost of farm lots, the Bank shall be subrogated by reason thereof to the rights of the landowner to collect and receive the yearly amortization/s on the farm lot/s or the amount paid including the interest thereon, from the above-named tenant-farmer beneficiary/ies in whose favor said farm lot/s has/have been transferred pursuant to Presidential Decree No. 27;

NOW, THEREFORE, for and in consideration of the foregoing premises, covenants and stipulations, I/We hereby ASSIGN, TRANSFER and CONVEY, absolutely and irrevocably to the LAND BANK OF THE PHILIPPINES, x x x all claims, rights, interests and participations of whatever nature or kind pertaining to the area/s covered by the Certificate/s of Land Transfer mentioned herein and transferred to the tenant-farmer/s x x x all existing improvements thereon x x x. (Underscoring ours)

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 88469 dated July 11, 2007 reversing and setting aside the October 1, 2004 Decision of the Regional Trial Court of Sorsogon, Branch 52 in Agrarian Case No. 2000-6767 and dismissing petitioners' complaint for determination and payment of just compensation, as well as the October 15, 2007 Resolution denying the Motion for Reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 181747. September 26, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NARCISO AGULAY *y* LOPEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS CONCLUSIONS ANCHORED ON ITS FINDINGS ARE ACCORDED BY THE APPELLATE COURT HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, MORE SO WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTION. — Consistent with the rulings of this Court, it is a fundamental and settled rule that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case. The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

2. CRIMINAL LAW; ILLEGAL SALE OF DRUGS; ELEMENTS. — In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; AN ARREST MADE AFTER AN ENTRAPMENT OPERATION IS CONSIDERED A VALID WARRANTLESS ARREST THAT DOES NOT REQUIRE A WARRANT. — [I]t is a well-established rule that an arrest made after an *entrapment* operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court, to wit: Section

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.

4. CRIMINAL LAW; ENTRAPMENT; BUY-BUST OPERATION, DEFINED. — A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; INSTANCES OF WARRANTLESS SEARCH AND SEIZURE. — There are eight (8) instances when a warrantless search and seizure is valid, to wit: (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NON-COMPLIANCE WITH THE REQUIRED PHYSICAL INVENTORY AND PHOTOGRAPH OF THE EVIDENCE IS NOT FATAL AND WILL NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED/CONFISCATED FROM HIM INADMISSIBLE; RATIONALE. — The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Section 21, Article II of Republic Act No. 9165 will not discharge accused-appellant from his crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, we find the integrity of the drugs seized intact,

and there is no doubt that the three sachets of drugs seized from accused-appellant were the same ones examined for chemical analysis, and that the crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride (*shabu*).

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FOR THE CLAIM OF FRAME-UP TO PROSPER, THE DEFENSE MUST BE ABLE TO PRESENT CLEAR AND CONVINCING EVIDENCE TO OVERCOME THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY LAW ENFORCEMENT AGENTS. — Like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. Absent any proof of motive to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over that of the accused-appellant. Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. Again, while the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity.

8. CRIMINAL LAW; ENTRAPMENT; BUY-BUST OPERATION; "OBJECTIVE" TEST. — [T]his Court has laid down the "objective" test in scrutinizing buy-bust operations. In *People v. Doria*, we said: We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug,

whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF POLICE OFFICERS ON THE BUY-BUST OPERATION DESERVE FULL FAITH AND CREDIT UNLESS CLEAR AND CONVINCING EVIDENCE IS PROFFERED SHOWING THAT THEY ARE DRIVEN BY ANY IMPROPER MOTIVE OR WERE NOT PROPERLY PERFORMING THEIR DUTY. — It bears to point out that prosecutions of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted the same, and unless clear and convincing evidence is proffered showing that the members of the buy-bust team were driven by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.

BRION*, J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; CONTRARY PROOF, ELUCIDATED. — That no person shall be denied the right to life, liberty or property without due process of law, nor be denied the equal protection of the laws stands at the first section of Article III (the Bill of Rights) of the Philippine Constitution because it is the most basic. In criminal proceedings, the due process requirement is so zealously guarded that over and above what Article III, Section 1 provides, the framers of the Constitution still saw it necessary to provide under Section 14 of the same Article that *"No person shall be held to answer for a criminal offense without due process of law."* Section 14 particularizes its protection by specifying under its paragraph (2) the rights that an accused shall enjoy, foremost among them the right to be *"presumed innocent until the contrary is proved."* Contrary proof, in constitutional terms, is proof beyond reasonable doubt that the prosecution must adduce evidence showing that a crime has been committed as charged, and that the accused committed the crime. It is only upon such proof that the burden of evidence shifts to the accused who is then given his or her chance to adduce evidence to show

that no crime was committed; or that circumstances exist to justify the commission of the act charged; or that somebody else committed the crime; or that reasonable doubt exists on whether a crime has been committed or that the accused committed the crime. An accused is only convicted if he fails in all these.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATION; SEIZURE AND CUSTODY OF DRUGS; PROCEDURE. — The required procedure is embodied in Section 21, paragraph 1, Article II of Republic Act No. 9165, which provides: 1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads: (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

3. ID.; ID.; ID.; ID.; ID.; WHILE NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURE MAY NOT RESULT IN THE INADMISSIBILITY OF THE SEIZED ITEMS, ITS INTEGRITY AS EVIDENCE IS GREATLY AFFECTED AND TAINTS THE REGULARITY OF THE PERFORMANCE OF POLICE DUTIES. — In several cases that came before us, we repeatedly emphasized that the *"failure of the [police]*

to comply with the requirement ***raises doubt*** *whether what was submitted for laboratory examination and presented in court was actually recovered from [the] appellant."* Hence, while the non-compliance with the prescribed procedure may not result in the inadmissibility of the seized items, its integrity as evidence is greatly affected. They taint as well the regularity of the performance of police duties.

4. ID.; ID.; IMPLEMENTING RULE; "CHAIN OF CUSTODY", DEFINED. — Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows: b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION IN THE REGULAR PERFORMANCE OF DUTIES AND PRESUMPTION OF INNOCENCE, ELUCIDATED. — Where, as in this case, the ruling relies on the presumption in the regular performance of official duties, there must necessarily be a clash of presumptions in light of the presumption of innocence that every accused enjoys. We note that the presumption of innocence is the root presumption that applies *at the inception of the case.* It is a constitutional presumption that exists for the accused arising from the fact that he is charged with the commission of a crime; the presumption exists without requiring the accused to do anything to trigger it other than the fact of standing criminally charged. The presumption in the regularity in the performance of official duties, on the other hand, only enters the picture as part of the case for the prosecution in its bid to establish the guilt of the accused beyond reasonable doubt. As it operates, the prosecution calls upon government officials tasked with responsibilities related to the crime charged, and on the basis of their

testimonies, submit that the crime has been duly proven. These testimonies may constitute proof beyond reasonable doubt on the basis of the *evidentiary* presumption that these officials were in the regular performance of their duties and had no reason to falsify — a statutory and rebuttable presumption created under Rule 131, Section 3(m) of the Rules of Court on evidence. From this perspective and from the fact that what this presumption can overturn is a constitutional presumption in favor of the accused, the premises underlying this evidentiary presumption must be sufficiently strong to support what it aims to do. This required strength in turn can only come from the general body of adduced evidence showing that **the performance of functions carried no taint of irregularity whatsoever** and that the official had **no motive to falsify.** Failing in either of these, the presumption cannot exist; in fact, to continue to recognize it as sufficient to overturn the constitutional presumption of innocence would be an unconstitutional act.

6. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BY ITSELF OVERCOME THE PRESUMPTION OF INNOCENCE NOR CONSTITUTE PROOF BEYOND REASONABLE DOUBT. — As explained in the case of *People v. Santos*, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Moreover, . . . As the Court ruled in *People v. Ambrosio*: The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, [f]irst, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.

7. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY CANNOT APPLY WHERE THE PERFORMANCE OF DUTY IS TAINTED WITH IRREGULARITY. — As painstakingly shown above from the prism of the prosecution's own evidence, the police failed to regularly discharge its duties in the conduct of the buy-bust operations, particularly in the handling of the items seized. There is a wide gap in the

prosecution's evidence that cannot but have an effect on the case as a whole, even if it does not result in the inadmissibility of the evidence. One such effect of the failure to comply with the procedure required by Section 21, Article II of R.A. No. 9165, as we held in *Lopez v. People* is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no *ifs* and *buts* regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.

CHICO-NAZARIO*, J., reply to dissenting opinion:*

1. CRIMINAL LAW; ILLEGAL SALE OF DRUGS; ELEMENTS; *CORPUS DELICTI*, DEFINED. — [I]n prosecutions for illegal sale of regulated or prohibited drugs, conviction is proper if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The term *corpus delicti* means the actual commission by someone of the particular crime charged.

2. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IMPLEMENTING RULES AND REGULATIONS; NON-COMPLIANCE WITH THE STIPULATED PROCEDURE, UNDER JUSTIFIABLE GROUNDS, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES OF AND CUSTODY OVER SAID ITEMS, FOR AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS. — [N]on-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. The evident purpose of the procedure provided for is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of or innocence of the accused.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; ACCUSED BEARS THE BURDEN TO MAKE SOME SHOWING THAT THE EVIDENCE WAS TAMPERED OR MEDDLED WITH TO OVERCOME A PRESUMPTION OF REGULARITY IN THE HANDLING OF EXHIBITS BY PUBLIC OFFICERS AND A PRESUMPTION THAT PUBLIC OFFICERS PROPERLY DISCHARGED THEIR DUTIES. — [T]he integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The accused-appellant in this case bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharged their duties.

4. ID.; ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; AS LONG AS THE CHAIN OF CUSTODY OF THE SEIZED SUBSTANCE WAS CLEARLY ESTABLISHED NOT TO HAVE BEEN BROKEN AND THAT THE PROSECUTION DID NOT FAIL TO IDENTIFY PROPERLY THE DRUGS SEIZED, IT IS NOT INDISPENSABLE THAT EACH AND EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TAKE THE WITNESS STAND. — Not all people who came into contact with the seized drugs are required to testify in court. There is nothing in the New Drugs Law or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized substance was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. In *People v. Zeng Hua Dian*, we held: After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation of witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion

as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

5. ID.; ID.; CREDIBILITY OF WITNESSES; THE COURT WILL NOT INTERFERE WITH THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES CONSIDERING THERE IS NOTHING ON RECORD THAT SHOWS SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE WHICH THE TRIAL COURT HAS OVERLOOKED, MISAPPRECIATED, OR MISINTERPRETED. — Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conduct the "buy-bust" operation. In cases involving violations of the Dangerous Drugs Law, appellate courts tend to heavily rely upon the trial court in assessing the credibility of witnesses, as it had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. This Court, not being a trier of facts itself, relies in good part on the assessment and evaluation by the trial court of the evidence, particularly the attestations of the witnesses, presented to it. Thus, this Court will not interfere with the trial court's assessment of the credibility of witnesses considering there is nothing on record that shows some fact or circumstance of weight and influence which the trial court has overlooked, misappreciated, or misinterpreted. Unless compelling reasons are shown otherwise, this Court, not being a trier of facts itself, relies in good part on the assessment and evaluation by the trial court of the evidence, particularly the attestations of witnesses, presented to it. As this Court has held in a long line of cases, the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.

6. ID.; ID.; FRAME-UP; CANNOT PREVAIL OVER THE POSITIVE AND STRAIGHTFORWARD TESTIMONIES OF POLICE OPERATIVES WHO HAVE PERFORMED THEIR DUTIES REGULARLY. — Appellant's defense of frame-up and self-serving assertion that he was mistakenly picked up by the police operatives for a carnapping case cannot prevail over the positive and straight-forward testimonies of the police operatives who have performed their duties regularly and in accordance with law, and have not been shown to have been

inspired by any improper motive or to have improperly performed their duty.

7. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; ONE WITNESS IS SUFFICIENT TO PROVE THE *CORPUS DELICTI* THERE BEING NO QUANTUM OF PROOF AS TO THE NUMBER OF WITNESSES TO PROVE THE SAME. — Even assuming *arguendo* that the presumption of regularity in the performance of official duty has been overcome because of failure to comply with Section 21(a), same will not automatically lead to the exoneration of the accused. Said presumption is not the sole basis for the conviction of the accused. His conviction was based not solely on said presumption but on the documentary and real evidence, and more importantly, on the oral evidence by prosecution witnesses whom we found to be credible. It is to noted that one witness is sufficient to prove the *corpus delicti* — that there was a consummated sale between the poseur buyer and the accused — there being no quantum of proof as to the number of witnesses to prove the same. In the case at bar, the selling of drugs by accused was established.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 31 August 2007 of the Court of Appeals in CA-G.R. CR No. 01994 entitled, ***People of the Philippines v. Narciso Agulay y Lopez***, affirming the Decision[2] rendered by

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[1] Penned by Associate Justice Portia-Alino-Hormachuelos with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring. *Rollo*, pp. 2-13.

[2] Penned by Judge Jaime N. Salazar, Jr.; CA *rollo*, pp. 20-23.

the Regional Trial Court (RTC) of Quezon City, Branch 103, in Criminal Case No. Q-02-111597, finding accused-appellant Narciso Agulay *y* Lopez guilty of illegal sale and illegal possession of methamphetamine hydrochloride more popularly known as "***shabu***."

On 26 August 2002, accused-appellant was charged in an Information before the RTC of Quezon City with violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information reads:

> That on or about the 24th day of August, 2002 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point twenty five (0.25) gram of methylamphetamine hydrochloride a dangerous drug.[3]

When arraigned on 23 September 2002, accused-appellant pleaded not guilty.[4] Thereafter, trial ensued.

During the trial, the prosecution presented the testimonies of Police Officer (PO) 2 Raul Herrera, the *poseur-buyer*, PO2 Reyno Riparip (member of the buy-bust team), and Forensic Analyst Leonard M. Jabonillo.

The prosecution's version of the events are narrated as follows:

On 24 August 2002, at around 6:30 in the evening, an informant arrived at Police Station 5 and reported to the Chief of the Station Drug Enforcement Unit (SDEU) that a certain "Sing" had been selling *shabu* at Brgy. Sta. Lucia, in Novaliches, Quezon City.

A police entrapment team was formed. PO2 Herrera was assigned as poseur-buyer and was given a ₱100.00 bill, which he marked "RH," his initials. A pre-operation report bearing

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[3] Records, p. 1.

[4] *Id.* at 23.

control No. 24-SDEU-02 was made and signed by Police Inspector (P/Insp.) Palaleo Adag dated 24 August 2002.

The buy-bust team rode in two vehicles, a Space Wagon and a Besta van, with a group of police officers inside. They stopped along J.P. Rizal St., Sta. Lucia, Novaliches, Quezon City.

PO2 Herrera and his informant stepped down from their vehicle and walked. The informant pointed the target pusher to PO2 Herrera. They approached and after being introduced to Sing, PO2 Herrera bought *shabu* using the marked ₱100.00 bill. Sing gave a small plastic sachet to PO2 Herrera who, thereafter, scratched his head as a signal. The other police companions of PO2 Herrera, who were deployed nearby, then rushed to the crime scene. PO2 Herrera grabbed Sing and then frisked him. PO2 Herrera recovered two (2) plastic sachets from Sing's pocket. He also got the marked money from Sing.

The following specimens were submitted to the Philippine National Police (PNP) Crime Laboratory of the Central Police District in Quezon City for chemical analysis:

Three (3) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

(A) (RH1-RG1) = 0.07 gm

(B) (RH2-RG2) = 0.09 gm

(C) (RH3-RG3) = 0.09 gm[5]

Chemistry Report No. D-1020-2002 dated 25 August 2002 and prepared and presented in court by Forensic Analyst Leonard M. Jabonillo (of the PNP Crime Laboratory of the Central Police District of Quezon City) yielded the following results–

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a regulated drug. x x x.

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[5] *Id.* at 14.

CONCLUSION:

Specimen A, B and C contain Methylamphetamine Hydrochloride, a regulated drug.[6]

The defense, on the other hand, had an entirely different version of what transpired that night. It presented three witnesses: accused-appellant Narciso Agulay, Benjamin Agulay (brother of Narciso), and Bayani de Leon.

Accused-appellant Narciso Agulay narrated that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, he was manning his store when a car stopped in front of it. The passengers of said vehicle opened its window and poked a gun at him. The passengers alighted from the car, approached him and put handcuffs on him. Accused-appellant asked what violation he had committed or if they had a search warrant with them, but the arresting team just told him to go with them. Accused-appellant requested that he be brought to the *barangay* hall first, but this request was left unheeded. Instead, he was immediately brought to the police station. Upon reaching the police station, PO2 Herrera handed something to PO1 Riparip. Thereafter, PO2 Herrera and PO1 Riparip approached and punched him on the chest. They removed his shorts and showed him a plastic sachet. Later that night, the arresting officers placed him inside the detention cell. After about 30 minutes, PO1 Riparip and PO2 Herrera approached him. PO2 Herrera told him that if he would not be able to give them ₱50,000.00, they would file a case against him, to which he answered, "I could not do anything because I do not have money."[7]

Benjamin Agulay, brother of accused-appellant, testified that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, while he was smoking in their compound, a group of armed men in civilian clothes entered the place and arrested his brother, who was then manning a store. He tried asking the arresting officers what the violation of accused-appellant was but he was ignored. They then took accused-appellant to the police station.

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[6] *Id.*

[7] TSN, 25 October 2004, p. 13.

On the other hand, the testimony of Bayani de Leon (a police asset of SPO1 Valdez of the buy-bust team) narrated that he, together with P/Insp. Suha, PO1 Herrera, PO2 Riparip, PO2 Gulferic and an arrested individual were on board a car while conducting a follow-up operation regarding a hold-up incident. When the car they were riding reached No. 51 J.P. Rizal Street, their team alighted and entered a compound. They saw accused-appellant and arrested him as he was allegedly involved in a hold-up incident, not with drug pushing. Accused-appellant was taken to Police Station 5.

On 17 February 2006, the RTC found accused-appellant guilty of the offense charged, and meted out to him the penalty of Life Imprisonment. The dispositive portion of the RTC Decision is as follows:

> Accordingly, judgment is rendered finding the accused NARCISO AGULAY *Y* LOPEZ GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 as charged (for drug pushing) and he is hereby sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.
>
> The methylamphetamine hydrochloride (in 3 sachets) involved in this case is ordered transmitted to the PDEA thru DDB for proper disposition.[8]

Accused-appellant filed his Notice of Appeal with Motion to Litigate as Pauper Litigant on 7 March 2006.

Accused-appellant filed his appellant's brief[9] with the Court of Appeals on 22 September 2006.

On 31 August 2007, the Court of Appeals issued its Decision denying accused-appellant's appeal as follows:

> WHEREFORE, finding no reversible error in the Decision appealed from, the appeal is DENIED. The Decision of the RTC dated February 17, 2006 is AFFIRMED.[10]

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[8] Records, p. 23.

[9] *Id.* at 35-49.

[10] *Rollo*, p. 12.

Petitioner elevated the case to this Court *via* Notice of Appeal[11] dated 21 September 2007. In its Resolution dated 2 April 2008, this Court resolved to:

> (3) Notify the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

To avoid a repetition of the arguments, accused-appellant opted to adopt his appellant's brief dated 22 September 2006 while plaintiff-appellee adopted its appellee's brief dated 22 January 2007, instead of filing their respective supplemental briefs.

The issues raised are the following:

I. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED AND AS SUCH, THE SACHETS OF *SHABU* ALLEGEDLY RECOVERED FROM HIM ARE INADMISSIBLE IN EVIDENCE.

II. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

III. ACCUSED-APPELLANT CANNOT BE HELD LIABLE FOR THE CONSUMMATED CRIME OF ILLEGAL SALE OF *SHABU* BECAUSE OF THE FAILURE OF THE PROSECUTION TO ESTABLISH ALL OF ITS ESSENTIAL ELEMENTS.

Accused-appellant maintains that his arrest was illegal, and that the subsequent seizure of *shabu* allegedly taken from him is inadmissible as evidence against him. He also claims that the prosecution failed to prove his guilt beyond reasonable doubt, since the prosecution failed to show all the essential elements of an illegal sale of *shabu*.

From the foregoing issues raised by accused-appellant, the basic issue to be resolved hinges on whether accused-appellant was arrested in a legitimate "buy-bust" operation.

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[11] Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. Consistent with the rulings of this Court, it is a fundamental and settled rule that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case. The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. Considering that what is at stake here is the liberty of accused-appellant, we have carefully reviewed and evaluated the records of the RTC and the Court of Appeals. On evaluation of the records, this Court finds no justification to deviate from the lower court's findings and conclusion that accused-appellant was arrested *in flagrante delicto* selling *shabu*.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements:

(1) identities of the buyer and seller, the object, and the consideration; and

(2) the delivery of the thing sold and the payment therefor.[12]

The testimonies of the prosecution witnesses proved that all the elements of the crime have been established: that the buy-bust operation took place, and that the *shabu* subject of the sale was brought to and identified in court. Moreover, PO2 Herrera, the poseur-buyer, positively identified accused-appellant as the person who sold to him the sachet containing the crystalline substance

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[12] *People v. Lee Hoi Ming*, 459 Phil. 187, 193 (2003).

which was confirmed to be *shabu*.[13] He narrated the events which took place the night accused-appellant was apprehended:

FIS. JURADO:

You said that you are stationed at Police Station 5, what were your duties there?

WITNESS:

As an operative sir.

FIS. JURADO:

What was your tour of duty on August 24, 2002?

WITNESS:

Broken hour sir.

FIS. JURADO:

But at around 6:30 in the evening, you are on duty?

WITNESS:

Yes, sir.

FIS. JURADO:

While you are on duty at that time and place, will you please inform this Honorable Court if there was an operation?

WITNESS:

Yes, sir.

FIS JURADO:

What is that operation all about?

WITNESS:

Buy bust operation sir.

FIS. JURADO:

Regarding what?

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[13] Chemistry Report No. D-1020-2002; Records, p. 14.

WITNESS:

Narcotic sir.

FIS. JURADO:

What is this all about?

WITNESS:

Alias Sing at Sta. Lucia sir.

FIS. JURADO:

How did you prepare for that buy-bust operation?

WITNESS:

An informant arrived and we reported to our Chief of SDEU and the Chief gave us ₱100.00 and I acted as poseur-buyer sir.

FIS. MJURADO (sic):

Aside from that what else?

WITNESS:

I put my markings sir.

FIS. JURADO:

What is that markings (sic)?

WITNESS:

R.H. sir.

FIS. JURADO:

What is the significance of this R.H.?

WITNESS:

That mean(sic) Raul Herrera sir.

FIS. JURADO:

Do you have said money with you?

WITNESS:

Yes sir.

FIS. JURADO:

Will you please show that to this Honorable Court?

WITNESS:

Here sir.

x x x x x x x x x

FIS. JURADO:

After you prepared the buy bust money, what else did you do?

WITNESS:

We proceeded to the target location, sir.

FIS. JURADO:

You said "we" who were with you?

WITNESS:

P/Insp. Addag, Rosario, SPO1 El Valdez, SPO2 Rey Valdez, Nogoy, Riparip and the confidential informant sir.

FIS. JURADO:

How did you proceed to the place of Sta. Lucia?

WITNESS:

We rode in a tinted vehicles (sic) one space wagon and Besta van, sir.

FIS. JURADO:

When you arrived in that place, what happened there?

WITNESS:

We asked our confidential informant to look for Sing, sir.

FIS. JURADO:

Did the confidential informant locate the said Sing?

WITNESS:

Yes sir along the street sir.

FIS. JURADO:

Where?

WITNESS:

J.P. Rizal St., Sta. Lucia, Novaliches, Quezon City, sir.

FIS. JURADO:

After your confidential informant found this Sing, what happened next?

WITNESS:

Our confidential informant asked me to go with him to see Sing to buy drug(s) sir.

FIS. JURADO:

Where is (sic) the transaction took (sic) place?

WITNESS:

Along the street sir.

FIS. JURADO:

What happened there?

WITNESS:

I was introduced by the confidential informant to Sing as buyer sir.

FIS. JURADO:

What happened next?

WITNESS:

I bought from him worth one hundred peso (sic) of *shabu*, sir.

FIS. JURADO:

What (sic) Sing do, if any?

WITNESS:

Sing gave me one small plastic sachet sir.

FIS JURADO:

After that what did you do next?

WITNESS:

I executed our pre-arranged signal sir.

FIS. JURADO:

For whom you executed this pre-arranged signal?

WITNESS:

To my companions sir.

FIS. JURADO:

Where are (sic) your companions at that time?

WITNESS:

On board at (sic) Besta and Space Wagon sir.

FIS. JURADO:

What was the pre-arranged signal?

WITNESS:

I scratched my head sir.

FIS. JURADO:

After scratching your head, what happened next?

WITNESS:

My back-up rushed to our place, sir.

FIS. JURADO:

After that what did you do next?

WITNESS:

I grabbed Sing and arrested him sir.

FIS. JURADO:

How about the money?

WITNESS:

I recovered the buy bust money from Sing, sir.

FIS. JURADO:

You mentioned plastic sachet, I am showing to you three (3) plastic sachets, which of these three was taken or sold to you?

WITNESS:

This one sir.

FIS. JURADO:

How did you come to know that this is the one?

WITNESS:

I have my initial(sic) R.H. sir.

x x x x x x x x x

FIS. JURADO:

Aside from that, what happened next?

WITNESS:

When I frisked Sing, I was able to recover from him two (2) more plastic sachets sir.

FIS. JURADO:

Where did you get that plastic sachet?

WITNESS:

Right side pocket sir.

FIS. JURADO:

Short or pant?

WITNESS:

Short sir.

FIS. JURADO:

Where are these two plastic sachets that you are mentioning?

WITNESS:

Here sir.

FIS. JURADO:

How did you come to know that these are the two plastic sachets?

WITNESS:

I put my markings sir RH.

x x x x x x x x x

COURT:

After that what happened next?

WITNESS:

We brought him to our Police Station, sir.

FIS. JURADO:

You mentioned Sing if this Sing is inside this courtroom, will you be able to identify him?

WITNESS:

Yes sir that man.

INTERPRETER:

Witness pointing to a man who identified himself as Narciso Agulay and his nickname is "Sing."[14]

His testimony was corroborated on material points by PO1 Riparip, one of the back-up operatives in the buy-bust operation that night, to wit:

FIS. JURADO:

You said that you are a police officer, where were you assigned on August 24, 2002?

WITNESS:

I was assigned at Police Station 5 for drug(sic) sir.

FIS. JURADO:

What was your tour of duty at that time?

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[14] TSN, 16 October 2002, pp. 3-10.

WITNESS:

Broken hour sir.

FIS. JURADO:

You were on duty on August 24, 2002 at 6:30 in the evening?

WITNESS:

Yes sir.

FIS. JURADO:

What was your functions(sic) as such?

WITNESS:

To conduct follow up operation on drugs and other crimes sir.

FIS. JURADO:

Did you conduct operation on that day?

WITNESS:

Yes sir we conducted narcotic operation sir.

FIS. JURADO:

You said you conducted narcotic operation, where?

WITNESS:

Sta. Lucia, particularly at J.P. Rizal St., Noveliches, Quezon City, sir.

FIS JURADO:

To whom this Narcotic opeation conducted?

WITNESS:

To certain *Alias* Sing, sir.

FIS. JURADO:

Who was the poseur-buyer?

WITNESS:

Herrera sir.

FIS. JURADO:

What did you see?

WITNESS:

The poseur buyer executed the pre-arranged signal and we rushed to his position and arrested the target person Sing sir.

FIS. JURADO:

When we (sic) rushed to the target place what happened next?

WITNESS:

Herrera frisked Sing and we brought him to the police station sir.[15]

Accused-appellant contends his arrest was illegal, making the sachets of *shabu* allegedly recovered from him inadmissible in evidence. Accused-appellant's claim is devoid of merit for it is a well-established rule that an arrest made after an *entrapment* operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court, to wit:

Section 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.

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[16] If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[17]

There are eight (8) instances when a warrantless search and seizure is valid, to wit:

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[15] TSN, 16 October 2002, pp. 20-23.

[16] *People v. Valencia*, 439 Phil. 561, 574 (2002).

[17] *People v. Abbu*, 317 Phil. 518, 525 (1995).

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations.

Considering that the legitimacy of the buy-bust operation is beyond question, the subsequent warrantless arrest and warrantless search and seizure, were permissible. The search, clearly being incident to a lawful arrest, needed no warrant for its validity. Thus, contrary to accused-appellant's contention, the contraband seized from him, having been obtained as a result of the buy-bust operation to which the defense failed to impute any irregularity, was correctly admitted in evidence. Noteworthy is the fact that prior to the dispatch of the entrapment team, a pre-operation report[18] was made bearing Control No. 24-SDEU-02 dated 24 August 2005. The pre-operation report stated that an Anti-Narcotic Operation was to be conducted at Barangay Sta. Lucia in Novaliches, Quezon City, and indicated the police officers involved, including the vehicles to be used. This only bolsters the testimony of PO2 Herrera and PO1 Riparip as to the legitimacy of the buy-bust operation.

The defense contends there is a clear doubt on whether the specimens examined by the chemist and eventually presented in court were the same specimens recovered from accused-appellant. The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Section 21,[19] Article II of Republic Act

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[18] Pre-Operation Report; Records, p. 6.

[19] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

No. 9165 will not discharge accused-appellant from his crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*,[20] this Court held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, we find the integrity of the drugs seized intact, and there is no doubt that the three sachets of drugs seized from accused-appellant were the same ones examined for chemical analysis, and that the crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride (*shabu*).

The defense, in fact, admitted the existence and authenticity of the request for chemical analysis and the subsequent result thereof:

FIS. JURADO:

Chemist Engr. Jabonillo is present your honor.

COURT:

Any proposal for stipulation?

FIS. JURADO:

That there is letter request for examination of white crystalline substance marked as follows: A (pH1); B (pH2) and C (pH3)?

ATTY. QUILAS:

Admitted your honor.

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(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[20] G.R. No. 179940, 23 April 2008.

FIS. JURADO:

As a result of the said qualitative examination chemist issued a chemistry report No. D-1020-2002?

ATTY. QUILAS:

Admitted your honor.

FIS. JURADO:

In view of the admission your honor, may we request that Letter request dated August 25, 2002 be marked as Exhibit 'D' and Chemistry Report No. D-1020-2002 as Exhibit 'E' your honor.

COURT:

Mark it.

In view of the presence of the Chemist, Engr. Jabonillo, He is being called to the witness stand for cross examination of the defense counsel.[21]

On cross-examination by the defense, Forensic Analyst Jabonillo stated that the drugs presented in court were the same drugs examined by him and submitted to him on 25 August 2002:

ATTY. QUILAS:

In this particular case, you received three plastic sachets?

WITNESS:

Yes sir.

ATTY. QUILAS:

When you receive these three plastic sachets were these already segregated or in one plastic container?

WITNESS:

I received it as is sir.

x x x x x x x x x

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[21] TSN, 28 March 2003, pp. 2-3.

ATTY. QUILAS:

How sure you were (sic) that three plastic sachet (sic) containing methylamphetamine hydrochloride were the same drug (sic) submitted to you on August 25, 2002.

WITNESS:

I personally place (sic) my marking sir.

ATTY. QUILAS:

You want to impress before this Honorable Court these were the same items that you received on August 25, 2002?

WITNESS:

Yes sir.[22]

On cross-examination by the defense, the same witness testified, to wit:

ATTY. DE GUZMAN:

I understand you are Chemical Engineer, am I correct?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And that you have been (sic) worked as a Chemist in the PNP for several years?

WITNESS:

Since March, 200 (sic), sir.

ATTY. DE GUZMAN:

What would be your practice when specimen submitted for you to examine, was it already pre-marked by the person who submit for examination?

WITNESS:

Normally, sir.

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

ATTY. DE GUZMAN:

What do you mean normally, you also put the marking?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

So everything has pre-mark?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And then when pre-mark specimen is submitted to you, you merely analyze the same is that correct?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And you do not change any marking there?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

Now in the marking that we have it appearing that Exhibits A, B, and C are PH, am I correct?

WITNESS:

RH sir, not PH.

ATTY. DE GUZMAN:

Because it shows in the zerox (sic) copy that it is RH because of that slant. Now when this specimen was submitted to you was it three specimens submitted to you or only one specimen A, B, C were ranking to one?

WITNESS:

No sir, three (3) specimens.[23]

It is significant to note that accused-appellant stated in his demurrer to evidence that the specimens submitted for laboratory examination were not the three plastic sachets that were allegedly recovered by the poseur-buyer PO2 Raul Herrera, which may thus be construed to be an implied admission.[24]

Accused-appellant's allegation that he is a victim of a frame-up, which has been held as a shop-worn defense of those accused in drug-related cases, is viewed by the Court with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted.[25] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials.[26] Absent any proof of motive to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over that of the accused-appellant.[27]

Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. Again, while the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity. This, it failed to do.

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[23] TSN, 15 February 2005, pp. 3-5.

[24] Records, p. 94.

[25] *People v. De Leon*, 440 Phil. 368, 388 (2002); *People v. Lee Hoi Ming*, *supra* note 12 at 195.

[26] *People v. De Leon*, *id.*, citing *People v. Zheng Bai Hui*, 393 Phil. 68, 135 (2000); *People v. Boco*, 368 Phil. 341, 366-367 (1999); *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 204.

[27] *People v. Bongalon*, 425 Phil. 96, 116 (2002).

Bayani de Leon's testimony that the accused was being taken as a carnapping suspect only further weakened the defense, considering it was totally out of sync with the testimony of accused-appellant *vis-à-vis* the positive testimonies of the police officers on the events that transpired on the night of 24 August 2002 when the buy-bust operation was conducted. It is also highly suspect and unusual that accused-appellant never mentioned that he was taken as a carnapping suspect if indeed this were the case, considering it would have been his ticket to freedom.

To recall, on direct examination by the defense counsel, Bayani de Leon testified as follows:

ATTY. CONCEPCION:

Mr. Witness, were you able to talk to Narciso Agulay that time he was arrested?

WITNESS:

Yes ma'am, when Narciso Agulay was put inside a room at Station 5 and in that room, I, Riparip and Herrera entered.

ATTY. CONCEPCION:

What was the conversation all about?

WITNESS:

He was being asked if he was one of those who held up a taxi ma'am.

ATTY. CONCEPCION:

What was the response of Narciso Agulay?

WITNESS:

Narciso Agulay was crying and at the same time denying that he was with that person. When we told him that the person we arrested with the firearm was pointing to him, he said that he does not know about that incident and he does not know also that person who pointed him ma'am.[28]

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[28] TSN, 24 January 2006, pp. 6-7.

Witness Bayani de Leon's testimony is dubious and lacks credence. From the testimony of Bayani de Leon, it is apparent that accused-appellant would necessarily have known what he was being arrested for, which was entirely inconsistent with accused-appellant's previous testimony. Such inconsistency further diminished the credibility of the defense witness. It would seem that Bayani de Leon's testimony was but a mere afterthought.

Moreover, Bayani de Leon testified that he allegedly came to know of the fact that accused-appellant was being charged under Republic Act No. 9165 when he (Bayani de Leon) was also detained at the city jail for robbery with homicide, testifying as follows:

FIS. ARAULA:

And you only knew that Narciso Agulay was charged of Section 5, R.A. 9165 when you were detained at the City Jail?

WITNESS:

Yes sir.

FIS. ARAULLA:

In fact, you were talking with each other?

WITNESS:

Yes sir, and I asked what is the case filed against him.

FIS. ARAULLA:

And that is the time you know that Narciso Agulay was charged of (sic) Section 5?

WITNESS:

Yes sir.[29]

This Court, thus, is in agreement with the trial court in finding that:

Bayani himself appears to be a shady character. By his admission he is a bata or agent of PO Vasquez. As far as the court knows, such

[29] *Id.* at 11.

characters are used by the police because they are underworld character (sic).[30]

Finally, the testimony of accused-appellant's brother, Benjamin Agulay, is not convincing. Being accused-appellant's brother, we find him to be unreliable. Suffice it to say that, having been given by a relative of the accused-appellant, his testimony should be received with caution.

On this premise, this Court has laid down the "objective" test in scrutinizing buy-bust operations. In *People v. Doria*,[31] we said:

> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. x x x.

It bears to point out that prosecutions of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted the same, and unless clear and convincing evidence is proffered showing that the members of the buy-bust team were driven by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[32]

We thus hold that accused-appellant's guilt has been established beyond reasonable doubt. This court shall now determine the proper penalties to be imposed on him.

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[30] CA *rollo*, p. 23.

[31] 361 Phil. 595, 621 (1999).

[32] *People v. Casolocan*, G.R. No. 156890, 13 July 2004, 434 SCRA 276, 282.

An examination of the Information reveals that accused-appellant was charged with the unauthorized sale and delivery of dangerous drugs consisting of twenty-five hundredths (0.25) gram of methylamphetamine hydrochloride (*shabu*). From the testimonies of the prosecution witnesses, only one sachet[33] was sold and delivered to the poseur-buyer, PO2 Herrera. The two other sachets[34] were not sold or delivered, but were found by PO2 Herrera inside the right pocket of accused-appellant's pair of shorts upon frisking, after the latter was caught *in flagrante delicto* during the buy-bust operation.

Accused-appellant could have been charged with the possession of dangerous drugs[35] on account of the second and third sachets. This was not done. He cannot then be convicted of possession of dangerous drugs, without being properly charged therewith, even if proved. Accused-appellant, however, is still guilty, as charged in the Information, of selling and delivering one sachet to the poseur-buyer.

Under Republic Act No. 9165, the *unauthorized sale* of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00).

Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.

We, therefore, find the penalty imposed by the trial court, as affirmed by the Court of Appeals — life imprisonment and a fine of ₱500,000.00 — to be proper.

WHEREFORE, premises considered, the Court of Appeals Decision in CA-G.R. CR No. 01994 dated 31 August 2007 is *AFFIRMED*.

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[33] TSN, 16 October 2002, pp. 8-9.

[34] *Id*.

[35] Republic Act No. 9165, Article II, Section 11.

SO ORDERED.

Velasco, Jr.[*] and *Reyes, JJ.,* concur.

Tinga,[*] *J.,* joins *J.* Brion's dissent.

Brion,[**] *J.,* dissents.

DISSENTING OPINION

BRION,[*] ***J.*:**

That no person shall be denied the right to life, liberty or property without due process of law, nor be denied the equal protection of the laws stands at the first section of Article III (the Bill of Rights) of the Philippine Constitution because it is the most basic. In criminal proceedings, the due process requirement is so zealously guarded that over and above what Article III, Section 1 provides, the framers of the Constitution still saw it necessary to provide under Section 14 of the same Article that *"No person shall be held to answer for a criminal offense without due process of law."* Section 14 particularizes its protection by specifying under its paragraph (2) the rights that an accused shall enjoy, foremost among them the right to be *"presumed innocent until the contrary is proved."* Contrary proof, in constitutional terms, is proof beyond reasonable doubt that the prosecution must adduce evidence showing that a crime has been committed as charged, and that the accused committed the crime. It is only upon such proof that the burden of evidence shifts to the accused who is then given his or her chance to adduce evidence to show that no crime was committed; or that

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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.

[**] Justice Arturo D. Brion was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 April 2008.

[*] Designated additional member of the Third Division vice Justice Antonio Eduardo B. Nachura per Raffle dated April 21, 2008.

circumstances exist to justify the commission of the act charged; or that somebody else committed the crime; or that reasonable doubt exists on whether a crime has been committed or that the accused committed the crime. An accused is only convicted if he fails in all these.

Under the proven facts of the present case, the prosecution has not proven that a crime had been committed through proof beyond reasonable doubt that the three plastic sachets that were *admitted into evidence during the trial* were in fact the same items *seized from the accused-appellant when he was arrested*. In short, there exists a gap in the prosecution's evidence that opens the room for doubt on whether there indeed had been a buy-bust operation where the accused was caught red-handed selling prohibited substance to a police operative.

The *ponencia's* conviction of the accused-appellant mainly relied on the credibility of two witnesses, namely: PO2 Raul Herrera (PO2 Herrera, the *poseur-buyer*) and PO2 Reyno Riparip (PO2 Riparip, who served as *back-up* in the buy-bust operation). A third witness testified for the prosecution — Forensic Analyst Leonard M. Jabonillo (Forensic Chemist Jabonillo) of the PNP Crime Laboratory of the Central Police District of Quezon City. His testimony, however, only dwelt on the chemical analysis of the specimens the police submitted to him; hence, it carries little relevance to ***the main thrust of this dissent — i.e., that the buy-bust operation and the consequent seizure of the prohibited substance either did not take place or have not been proven beyond reasonable doubt because of a gap in the prosecution's evidence.*** Significantly, the police testimonies did not receive the minute and detailed scrutiny that they deserve because of the *presumption that the police witnesses must have spoken the truth because they were policemen in the regular performance of their official duties.* This presumption not only lent credibility to the police witnesses; it also became the basis to disbelieve the defense evidence: who were they to be believed after the police had spoken? Indeed the *ponencia's* line of reasoning is unfortunate. Had it chosen to minutely scrutinize the police testimonies in light of the procedural requirements of R.A. 9165 on how seized evidence must be handled, and

considered all these with the defense evidence — particularly the allegation of "frame up" — a far different conclusion would have resulted, rendering this Dissent unnecessary; the accused would have been acquitted because the prosecution failed to prove its case beyond reasonable doubt and thus failed to overcome his constitutional presumption of innocence.

The requirements of Section 21, paragraph 1 of Article II of Republic Act No. 9165.

A police buy-bust operation, because of the built-in danger for abuse that it carries, is governed by a specific procedure with respect to the seizure and custody of drugs. In *People v. Tan*,[1] we recognized that "*by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.*"

The required procedure is embodied in Section 21, paragraph 1, Article II of Republic Act No. 9165, which provides:

> 1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis supplied]

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

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[1] G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126-127, citing *People v. Gireng*, 241 SCRA 11 (1995).

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Nothing in the records or in the evidence adduced show that the buy-bust team followed this procedure despite its mandatory terms as indicated by the use of "shall" in its directives. To be sure, the implementing rules offer some flexibility when it states, albeit without any sufficient basis in the underlying law, that "*non-compliance with these requirements under justifiable grounds as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.*" This clause, however, is not a saving or escape mechanism that by itself justifies and validates every improper seizure and custody of the seized items. There still must be shown *justifiable grounds* as well as proof that the integrity and evidentiary value of the evidence have been preserved. These justificatory requirements must of course be read in light of the above-described purpose of the law. Significantly, not only does the present case lack the most basic or elementary attempt at compliance with the law and its implementing rules; **it fails as well to provide any justificatory ground showing that the integrity of the evidence adduced had all along been preserved.**

In several cases that came before us, we repeatedly emphasized that the "*failure of the [police] to comply with the requirement* ***raises doubt*** *whether what was submitted for laboratory examination and presented in court was actually recovered from [the] appellant*."[2] Hence, while the non-compliance with

[2] *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 598.

the prescribed procedure may not result in the inadmissibility of the seized items, its integrity as evidence is greatly affected. They taint as well the regularity of the performance of police duties, as the discussions below will show.

In *People v. Orteza*,[3] the Court had the occasion to discuss the implications of the failure to comply with Section 21, paragraph 1, to wit:

> . . . In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.
>
> The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and **to observe the procedure and take custody of the drug.**
>
> More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and **the lack of inventory on the seized drugs** created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*. [Emphasis supplied]

We reached the same conclusion in *People v. Nazareno*[4] and *People v. Santos*,[5] where we again stressed the importance of complying with the prescribed procedure.

The prosecution totally failed to prove the chain of custody over the seized items.

Other than the markings that PO2 Herrera alleged, the prosecution in the present case miserably failed to undertake any of the procedures that the above-quoted law and regulation require. There was **no physical inventory** and **no photograph** of

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[3] G.R. No. 173051. July 31, 2007, 528 SCRA 750, 758-759.

[4] G.R. No. 174771, September 11, 2007, 532 SCRA 630, 637.

[5] G.R. No. 175593, October 17, 2007, 536 SCRA 489, 504.

the confiscated items that were taken in the presence of the accused. The police failed as well to definitely show by evidence ***the time*** PO2 Herrera marked the confiscated items. The deficiency patently shows in the following exchange during the trial:

FIS. JURADO:

You mentioned plastic sachet, I am showing to you three (3) plastic sachets, which of these three was taken or sold to you?

WITNESS:

I have my initial (sic) R.H. sir.

x x x x x x x x x

FIS. JURADO

Aside from that, what happened next?

WITNESS:

When I frisked Sing, I was able to recover from him two (2) more plastic sachets sir.

x x x x x x x x x

x x x x x x x x x

FIS. JURADO:

How did you come to know that theses are the two plastic sachets?

WITNESS:

I put my markings sir RH.

x x x x x x x x x

COURT:

After that what happened next?

WITNESS:

We brought him to our Police Station, sir.

While PO2 Herrera testified on the turnover of the seized items to the PNP Crime Laboratory for examination, **no evidence** was presented regarding the **custody of the drugs during the**

interim period between the arrest and confiscation of the seized items and its turnover. Thus, there was a substantial and significant gap in the chain of custody of the seized evidence.

In the recent case of *Lopez v. People*,[6] the Court explained the importance of establishing the chain of custody of the confiscated drugs, to wit:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.**
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, **an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable**, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule. [Emphasis supplied]

Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002[7] which implements R.A. No. 9165 defines "chain of custody" as follows:

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[6] G.R. No. 172953, April 30, 2008.

[7] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment

b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Although this regulation took effect[8] after the commission of the crime charged, it is nonetheless useful in illustrating how the process of preserving the integrity of the chain of custody of the seized drugs is upheld and maintained, and that is, by duly recording its authorized movements from the time of its seizure, to its handling by the police, to the receipt of the forensic laboratory, until it is presented in court and subsequently destroyed. This is the "movement" or chain of custody of the items allegedly seized from the accused-appellant that is plainly lacking in the present case as early as the time of their alleged seizure. Aside from the deficiencies pointed out above, the lack of documentation of the chain of custody is highlighted by the testimony of Forensic Analyst Jabonillo who testified on the manner of his receipt of the seized items which he analyzed on August 25, 2002, to wit:

ATTY. DE GUZMAN:

> What would be your practice when specimen submitted for you to examine, was it already pre-marked by the person who submit for examination?

WITNESS:

> Normally, sir.

ATTY. DE GUZMAN:

> What do you mean normally, you also put the marking?

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pursuant to Section 21, Article II of the IRR of RA 9165 in relation to Section 81(b) Article IX of RA 9165.

[8] Adopted and approved on October 18, 2002.

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And then when pre-mark specimen is submitted yo tou (sic), you merely analyze the same is that correct?

WITNESS:

Yes, sir.

Clearly, this testimony failed to disclose the **identity of the person who submitted the items** which he later on examined.[9] Likewise, he failed to testify on **how the evidence was handled after his chemical analysis**.

The integrity and the evidentiary value of the examined and presented seized items are highly questionable.

The *ponencia* found that the integrity and evidentiary value of the *seized* items were preserved by relying on the testimony of Forensic Analyst Jabonillo who, on the witness stand, affirmed that *the sachets containing the shabu which was presented in court were the same ones that he examined*. This testimony, however, has no bearing on the question of whether the specimens he examined were the ones seized from the accused or whether they were seized from the accused at all. All that this testimony proved — and these the defense admitted[10] — were the *existence* and *authenticity* of the request for chemical analysis and the results of this analysis, not the required chain of custody from the time of seizure of the evidence.

For a better appreciation of the evidentiary worth of the testimony of Forensic Analyst Jabonillo, Section 44, Rule 130 on the Rules of Evidence provides that "*entries in official records made in the performance of his duty by a public officer . . . or by a person in the performance of a duty specially enjoined*

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[9] Decision, p. 22.

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

by law, are prima facie evidence of the facts stated therein." The defense admission **only relates to the facts stated** in the document, *i.e.*, that a request for chemical analysis was made on the items submitted together with the request to the PNP Crime Laboratory; and second, the admission only relates to the results of the chemical analysis conducted on the items stated in the request. *To reiterate, it did not have the effect of admitting that the items stated in the request and submitted for examination were in fact the very items seized from accused-appellant.*

The Clash of Presumptions

Where, as in this case, the ruling relies on the presumption in the regular performance of official duties, there must necessarily be a clash of presumptions in light of the presumption of innocence that every accused enjoys. We note that the presumption of innocence is the root presumption that applies *at the inception of the case*. It is a constitutional presumption that exists for the accused arising from the fact that he is charged with the commission of a crime; the presumption exists without requiring the accused to do anything to trigger it other than the fact of standing criminally charged.

The presumption in the regularity in the performance of official duties, on the other hand, only enters the picture as part of the case for the prosecution in its bid to establish the guilt of the accused beyond reasonable doubt. As it operates, the prosecution calls upon government officials tasked with responsibilities related to the crime charged, and on the basis of their testimonies, submit that the crime has been duly proven. These testimonies may constitute proof beyond reasonable doubt on the basis of the *evidentiary* presumption that these officials were in the regular performance of their duties and had no reason to falsify — a statutory and rebuttable presumption created under Rule 131, Section 3(m) of the Rules of Court on evidence. From this perspective and from the fact that what this presumption can overturn is a constitutional presumption in favor of the accused, the premises underlying this evidentiary presumption must be sufficiently strong to support what it aims to do. This required strength in turn can only come from the general body

of adduced evidence showing that **the performance of functions carried no taint of irregularity whatsoever** and that the official had **no motive to falsify**. Failing in either of these, the presumption cannot exist; in fact, to continue to recognize it as sufficient to overturn the constitutional presumption of innocence would be an unconstitutional act.

As explained in the case of *People v. Santos*,[11] the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Moreover,

> . . . As the Court ruled in *People v. Ambrosio*:
>
> The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, [f]irst, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.[12]

The Presumption of Regularity cannot apply where the performance of duty is tainted with irregularity.

As painstakingly shown above from the prism of the prosecution's own evidence, the police failed to regularly discharge its duties in the conduct of the buy-bust operations, particularly in the handling of the items seized. There is a wide gap in the prosecution's evidence that cannot but have an effect on the case as a whole, even if it does not result in the inadmissibility of the evidence.

One such effect of the failure to comply with the procedure required by Section 21, Article II of R.A. No. 9165, as we held in *Lopez v. People*[13] is to negate the presumption that official

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[11] *Supra*. note 5, p. 503.

[12] *Ibid.*

[13] *Supra.*, note 6.

duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no *ifs* and *buts* regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.

Another effect, as we held in *Valdez v. People*[14] is to create a doubt on the existence of *corpus delicti, i.e.,* on the issue of whether a crime had indeed been committed. Without credible evidence showing the existence of the prohibited drug that had been the subject matter of the illegal transaction, there can be no crime committed.

Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and must sufficiently establish proof beyond reasonable doubt that a crime had been committed and that the accused committed this crime. The defense evidence must likewise be so regarded once the prosecution has established a *prima facie* case, without however being hobbled by the presumption of regularity.

Another necessary consequence of the absence of any presumption of regularity is that the *ponencia* can no longer impose on the defense the burden of proving that the police had an improper motive in charging the accused with the illegal sale of prohibited drug; the *ponencia* can no longer conclude, as it did, that the police testimonies are credible in the absence of such motive.

Interestingly, the police motive was precisely the defense the accused presented, only to be discredited because of the *ponencia's* undue reliance on the presumption of regularity. As its main defense, the accused testified that he was the victim of a *hulidap* and that his arrest was merely a scheme to extort money from him. This imputation did not stand alone as it was corroborated by defense witness De Leon, an admitted police asset, who testified that the accused-appellant was really picked up by the police on a hold-up charge on August 24, 2002.

[14] G.R. No. 170180, November 23, 2007, 538 SCRA 611, 628-629.

Unfortunately, De Leon's testimony did not stand a chance of being believed given the contrary police testimony supported by its presumption of regularity and was simply brushed aside, allegedly because De Leon spoke with the accused-appellant prior to taking the witness stand; because he is a "shady character"; and because his testimony was inconsistent with version of the accused.

A deeper consideration of De Leon's testimony — unaffected by any contrary evidence supported by a presumption of regularity — would however show that it is not as worthless as the *ponencia* concluded it to be. *First*, De Leon appears to be the only disinterested witness in the case as the prosecution failed to show that he had any selfish motivation, had something to gain in the event of a favorable outcome for the accused, or had reason to falsify. *Second*, human experience — particularly, Philippine experience — tells us that as a police asset, he placed himself at a very serious risk in testifying as he did against the police. For this alone, his testimony should deserve serious notice and consideration. *Lastly*, the prosecution miserably failed to refute De Leon's allegations, specifically, that he was a police asset and was with the police team who picked the accused-appellant on a holdup charge, and that he saw the accused-appellant being interrogated by the police on August 24, 2002 on a carnapping charge and not on a drug-related matter. Thus, he claimed that that he did not know that the accused was charged in a drug case until he spoke with him at a much later time.[15]

In the absence of any contrary presumption of regularity, the testimony of Benjamin Agulay, brother of the accused, should not likewise automatically be dismissed as biased testimony. While it should be looked upon with caution, it does not necessarily follow that it is unworthy of belief. It should have been at least examined for its merits in light of the prosecution's own evidence.

In sum, aside from the gap in the prosecution's evidence proving the identity of the prohibited items allegedly seized,[16]

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[15] Decision, p. 27.

[16] *People v. Nazareno, supra.* Note 4.

the defense of frame-up is not without its evidentiary merits after the presumption of regularity is taken away. Even granting that the accused did indeed make an implied admission in his *demurrer to evidence* acknowledging that the buy-bust operation actually took place, the admission still does not fully constitute proof beyond reasonable doubt capable of overcoming the accused's presumption of innocence; **it does not establish by proof beyond reasonable doubt through the evidence adduced during the trial that the prohibited drug identified in court was the same prohibited drug that the accused illegally sold**. The accused, under the circumstances, should be acquitted on ground of reasonable doubt.

REPLY TO DISSENTING OPINION

CHICO-NAZARIO, *J.*:

Drug addiction has been invariably denounced as one of the most pernicious evils that has ever crept into our society. Those who become addicted to it, not only slide into the ranks of the living dead, but also become a grave menace to the law-abiding members of society. Peddlers of drugs are actually agents of destruction.

In recent years, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law.[1] Indeed, illegal drug trade is the scourge of society.[2]

In government's vigorous campaign to eradicate the hazards of drug use and drug trafficking, this Court upholds the law ensuring that it is not permitted to run roughshod over an accused's right to be presumed innocent until proven guilty nor hie away from its corollary obligation to establish such guilt beyond reasonable doubt.

At the very heart of the Constitution is the grant of primordial importance to the right to life, liberty, and property such that

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[1] *People v. Ganenas*, G.R. No. 141400, 6 September 2001.

[2] *People v. Requiz*, G.R. No. 130922, 19 November 1999.

the first section of the Bill of Rights, Article III of the 1987 Philippine Constitution, unequivocally states that no person shall be denied the right to life, liberty or property without due process of law, nor be denied the equal protection of the laws.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved.[3] This presumption of innocence of an accused in a criminal case is consistent with a most fundamental constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. This constitutional guarantee is so essential that the framers of the constitution found it imperative to keep the provision from the old constitution to emphasize the primacy of rights that no person shall be held to answer for a criminal offense without due process of law.[4]

Thus, in criminal cases, it is incumbent upon the prosecution to establish its case with that degree of proof which produces conviction in an unprejudiced mind,[5] with evidence which stands or falls on its own merits and which cannot be allowed to draw strength from the weakness of the evidence for the defense.[6]

Main thrust of the dissent

The main thrust of the dissent is focused on its conviction **that the buy-bust operation and the consequent seizure of the prohibited substance either did not take place or has not been proven beyond reasonable doubt because of a gap in the prosecution's evidence.** Convinced that under the proven facts of the present case, the dissent maintains that the prosecution has not proven that a crime had been committed through proof beyond reasonable doubt — that the three plastic sachets that

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[3] PHILIPPINE CONSTITUTION, Article III, Section 14, Paragraph 1.

[4] *Id*.

[5] RULES OF COURT, Rule 133, Section 2.

[6] *People v. Borneo*, 220 SCRA 557, 567 [1993]; *People v. Pidia*, 249 SCRA 687, 702 [1995].

were admitted into evidence during the trial were in fact the same items seized from the accused-appellant when he was arrested.

Guilt of accused-appellant was established beyond reasonable doubt.

Contrary to the dissent's claim, the totality of the evidence would indicate that the sale of the prohibited drug had taken place, and that the sale was adequately established and the prosecution witnesses clearly identified accused-appellant as the offender. Moreover, the seized items, proven positive to be *shabu*, were properly identified and presented before the court.

Elements to constitute the crime of illegal sale of dangerous drugs

In prosecutions for illegal sale of regulated or prohibited drugs, conviction is proper if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug.[7] The term *corpus delicti* means the actual commission by someone of the particular crime charged.

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165, to wit:

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

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[7] *People v. Hajili*, 447 Phil. 283; *People v. Martinez*, 235 SCRA 171 [1994]; *People v. Rigodon*, 238 SCRA 27 [1994].

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officers/team, shall not render void and invalid such seizures of and custody over said items.

The above provision further states that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. The evident purpose of the procedure provided for is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of or innocence of the accused.

Chain of custody of the seized items

The dissent agreed with accused-appellant's assertion that the police operatives failed to comply with the proper procedure in the custody of the seized drugs. It premised that **non-compliance with the procedure in Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 creates an irregularity and overcomes the presumption of regularity accorded police authorities in the performance of their official duties.** This assumption is without merit.

First, it must be made clear that in several cases[8] decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.

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[8] *People v. Naquita*, G.R. No. 180511, 28 July 2008; *People v. Concepcion*, G.R. No. 178876, 27 June 2008; *People v. Del Monte*, G.R. No. 179940, 23 April 2008.

Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21 (a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption.[9] We held:

> The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.

While accused-appellant contends in his appellant's brief that the police operatives did not submit the required inventory of the seized items pursuant to the provisions of Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, the records belie this claim. On cross-examination by the defense, Police Officer (PO) 2 Herrera testified on making an inventory of the seized items. PO2 Herrera testified as follows:

Q: When you arrested the suspect in this case, you confiscated two (2) items from him?

A: Yes sir.

Q: And you said that it is part of your procedure when you confiscated items from the suspect you made an inventory of the item confiscated?

A: Yes sir.

Q: Did you make inventory of the confiscated items?

A: Yes sir it is with the police investigator.[10]

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[9] *People v. De los Reyes*, G.R. No. 106874, 21 January 1994.

[10] TSN, 16 October 2002, pp. 18-19.

Moreover, non-compliance with the procedure outlined in Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.

Consistent with this Court's pronouncements in *People v. Bano*[11] and in *People v. Miranda*,[12] contrary to appellant's claim, there is no showing of a broken chain in the custody of the seized items, later on determined to be *shabu*, from the moment of its seizure by the entrapment team, to the investigating officer, to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachets containing the *shabu* that the substance tested by the forensic chemist, whose laboratory tests were well-documented, was the same as that taken from accused-appellant.

The records of the case indicate that after his arrest, accused-appellant was taken to the police station and turned over to the police investigator. PO2 Herrera testified that he personally[13] made the markings "RH" (representing his initials) on the three sachets, the inventory[14] of which was delivered to the police investigator. After the arrest, the seized items which had the markings "RH" alleged to contain *shabu* were brought to the crime laboratory for examination.[15] The request for laboratory examination and transfer of the confiscated sachets to the PNP crime laboratory was prepared by another officer, PO2 Gulferic, the designated officer-on-case.[16] It was signed as well by the

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[11] 419 SCRA 677, 15 January 2004.

[12] 534 SCRA 552, 2 October 2007.

[13] TSN, 16 October 2002, pp. 9-10.

[14] TSN, 16 October 2002, p. 16.

[15] *Id.* at 11.

[16] Records, Exhibit D, p. 12.

Chief of Office/Agency (SDEU/SIIB) Police Chief Inspector Leslie Castillo Castillo. The request indicated that the seized items were delivered by PO2 Gulferic and received by Forensic Chemist Jabonillo.[17] The three heat-sealed transparent plastic sachets each containing white crystalline substance were later on determined to be positive for Methylamphetamine Hydrochloride or *shabu*.

When the prosecution presented the marked sachets in court, PO2 Herrera positively identified the plastic sachets containing *shabu* which he bought from accused-appellant in the buy-bust operation. The sachets containing *shabu* had the markings "RH" as testified by Forensic Chemist Jabonillo. PO2 Herrera positively identified in court that he put his initials "RH" on the sachets. Thus, the identity of the drugs has been duly preserved and established by the prosecution. Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The accused-appellant in this case bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharged their duties.[18]

PO2 Herrera identified the sachets in court, and more importantly, accused-appellant had the opportunity to cross-examine him on this point.

This Court, thus, sees no doubt that the sachets marked "RH" submitted for laboratory examination and which were later on found to be positive for *shabu*, were the same ones sold by accused-appellant to the poseur-buyer PO2 Herrera during the buy-bust operation. There is no question, therefore, that the identity of the prohibited drug in this case was certainly safeguarded.

The dissent maintains that the chain of custody rule "would include testimony about every link in the chain, from the moment

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[17] *Id*.

[18] *People v. Miranda*, 534 SCRA 553, 2 October 2007.

the item was picked up to the time it is offered into evidence x x x." This means that all persons who came into contact with the seized drugs should testify in court; otherwise, the unbroken chain of custody would not be established.

I disagree. Not all people who came into contact with the seized drugs are required to testify in court. There is nothing in the New Drugs Law or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized substance was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. In *People v. Zeng Hua Dian*,[19] we held:

> After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation of witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

In connection with this, it must not be forgotten that entries in official records made by a public officer in the performance of his duty are *prima facie* evidence of the facts therein stated.[20] If it is now a requirement that all persons who came into contact with the seized drugs should testify in court, what will now happen to those public officers (*e.g.*, person who issued request for examination of drugs or those who tested the drugs) who issued documents regarding the seized drugs? Shall they be obligated to testify despite the fact the entries in the documents they issued are *prima facie* evidence of the facts therein stated? I do not think so. Unless there is proof to the contrary, the

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[19] 14 June 2004, G.R. No. 145348, 432 SCRA 25.

[20] RULES OF COURT, Rule 130, Section 44.

entries in the documents are *prima facie* evidence of the facts therein stated and they need not testify thereon.

The dissenting opinion likewise faults the prosecution for failing to disclose the identity of the person who submitted the item that was examined. The answer to this question can easily be seen from the stamp made in the request for drug analysis. There being no question by the accused on this matter, the entry thereon made by the public officer is definitely sufficient, same being an entry in official records.

On the credibility of the witnesses

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conduct the "buy-bust" operation.[21] In cases involving violations of the Dangerous Drugs Law, appellate courts tend to heavily rely upon the trial court in assessing the credibility of witnesses, as it had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination.[22] This Court, not being a trier of facts itself, relies in good part on the assessment and evaluation by the trial court of the evidence, particularly the attestations of the witnesses, presented to it.[23] Thus, this Court will not interfere with the trial court's assessment of the credibility of witnesses considering there is nothing on record that shows some fact or circumstance of weight and influence which the trial court has overlooked, misappreciated, or misinterpreted. Unless compelling reasons are shown otherwise, this Court, not being a trier of facts itself, relies in good part on the assessment and evaluation by the trial court of the evidence, particularly the attestations of witnesses, presented to it. As this Court has held in a long line of cases, the trial court is in a better position to decide the question, having heard the witnesses themselves

[21] *People v. Sy*, G.R. No. 147348, 24 September 2002.

[22] *People v. Mala*, 411 SCRA 327, 18 September 2003; *People v. Julian-Fernandez*, 372 SCRA 608, 18 December 2001; *People v. Corpuz*, G.R. No. 148919, 17 December 2002.

[23] *People v. Cueno*, 298 SCRA 626, 16 December 1998.

and observed their deportment and manner of testifying during the trial.

Accused-appellant casts suspicion on the means or methods by which the police officers conducted the operation and claims to be the victim of a frame-up. According to accused-appellant, the trial court relied heavily on the police officers' testimonies that what had actually transpired was a buy-bust operation, which resulted in his arrest.

In almost every case involving a buy-bust operation, the accused put up the defense of frame-up. Such claim is viewed with disfavor, because it can easily be feigned and fabricated. In *People v. Uy*, the Court reiterated its position on the matter, to wit:

> We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can easily be concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts x x x accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. x x x[24]

In the case at bar, the testimonies of the prosecution witnesses are positive and convincing, sufficient to sustain the finding of the trial court and the Court of Appeals that accused-appellant's guilt had been established beyond reasonable doubt. First, the testimony of PO2 Raul Herrera was spontaneous, straightforward and categorical. Second, PO1 Reyno Riparip, the back-up police operative of PO2 Herrera, corroborated the latter's testimony on material points.

Appellant's defense of frame-up and self-serving assertion that he was mistakenly picked up by the police operatives for

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[24] G.R. No. 129019, 16 August 2000.

a carnapping case cannot prevail over the positive and straightforward testimonies of the police operatives who have performed their duties regularly and in accordance with law, and have not been shown to have been inspired by any improper motive or to have improperly performed their duty.[25]

To reiterate, Bayani de Leon's testimony that the accused was being taken as a carnapping suspect only further weakened the defense, considering it was totally out of sync with the testimony of accused-appellant *vis-à-vis* the positive testimonies of the police officers on the events that transpired on the night of 24 August 2002 when the buy-bust operation was conducted.

On direct examination by the defense counsel, Bayani de Leon, who is an inmate at the QC Jail, testified as follows:

ATTY. CONCEPCION:

Mr. Witness, were you able to talk to Narciso Agulay that time he was arrested?

WITNESS:

Yes ma'am, when Narciso Agulay was put inside a room at Station 5 and in that room, I, Riparip and Herrera entered.

ATTY. CONCEPCION:

What was the conversation all about?

WITNESS:

He was being asked if he was one of those who held up a taxi ma'am.

ATTY. CONCEPCION:

What was the response of Narciso Agulay?

WITNESS:

Narciso Agulay was crying and at the same time denying that he was with that person. When we told him that the person we arrested with the firearm was pointing to him, he said that he

[25] *People v. Saludes*, 403 SCRA 590 [2003]; *Arcilla v. Court of Appeals*, 418 SCRA 497; *People v. Mala*, 411 SCRA 327 [2003].

does not know about that incident and he does not know also that person who pointed him ma'am.[26]

Witness Bayani de Leon's testimony is dubious and lacks credence. From the testimony of Bayani de Leon, it is apparent that accused-appellant knew he was being arrested for a hold-up incident.

In the earlier testimony of accused-appellant, he testified that the police officers did not tell him what he was being arrested for. It is suspect and unusual that accused-appellant never mentioned that he was taken as a hold-up suspect if indeed this were the case, considering it would have been his ticket to freedom. It would seem that Bayani de Leon's testimony was but a mere afterthought.

The arrest of accused-appellant was made in the course of an entrapment, following a surveillance operation, normally performed by police officers in the apprehension of violators of the Dangerous Drugs Act.

The Court so holds that in the absence of proof of any odious intent on the part of the police operatives to falsely impute such a serious crime, as the one imputed against accused-appellant, it will not allow their testimonies to be overcome by the self-serving claim of frame-up.

Even assuming *arguendo* that the presumption of regularity in the performance of official duty has been overcome because of failure to comply with Section 21 (a), same will not automatically lead to the exoneration of the accused. Said presumption is not the sole basis for the conviction of the accused. His conviction was based not solely on said presumption but on the documentary and real evidence, and more importantly, on the oral evidence by prosecution witnesses whom we found to be credible. It is to be noted that one witness is sufficient to prove the *corpus delicti* — that there was a consummated sale between the poseur buyer and the accused — there being no quantum of proof as to the number of witnesses to prove the same. In the case at bar, the selling of drugs by accused was established.

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[26] TSN, 24 January 2006, pp. 6-7.

The dissent likewise argues that the *ponencia* cannot impose on the defense the burden of proving that the police had an improper motive in charging him because of the absence of the presumption of regularity.

We find this untenable. It is settled that if the testimonies of the prosecution witnesses are not impugned, full faith and credit shall be accorded them. One impugns the testimony of witness during cross-examination. Did the defense satisfactorily impugn the testimonies of the prosecution witnesses when he said that he was a victim of *hulidap* and that the policemen were extorting money from him? Said declaration is definitely not sufficient to impugn the testimonies of the prosecution witnesses. His mere say so that he was victimized without clear and convincing evidence to support such claim does not suffice. If what he claims was indeed committed by the policemen, he should have sued or charged them. This, he did not do. Such inaction runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of.[27]

From the foregoing, I am fully convinced that the accused is guilty as charged.

THIRD DIVISION

[G.R. No. 182718. September 26, 2008]

JULIO B. PURCON, JR., *petitioner, vs.* **MRM PHILIPPINES, INC. and MIGUEL L. RIVERA/MARITIME RESOURCES MANAGEMENT,** *respondents.*

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[27] *People v. Ahmad*, G.R. No. 148048, 15 January 2004, 419 SCRA 677.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENT; NOT AN AVAILABLE REMEDY IN THE SUPREME COURT; RATIONALE. — A petition for relief from judgment is not an available remedy in the Supreme Court. First, although Section 1 of Rule 38 states that when a judgment or final order is entered through fraud, accident, mistake, or excusable negligence, a party in any court may file a petition for relief from judgment, this rule must be interpreted in harmony with Rule 56, which enumerates the original cases cognizable by the Supreme Court, thus: Section 1. *Original cases cognizable*. — Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court. A petition for relief from judgment is **not** included in the list of Rule 56 cases originally cognizable by this Court. **Second**, while Rule 38 uses the phrase "any court," **it refers only to Municipal/Metropolitan and Regional Trial Courts. Third**, the procedure in the CA and the Supreme Court are governed by separate provisions of the Rules of Court. It may, from time to time, be supplemented by additional rules promulgated by the Supreme Court through resolutions or circulars. As it stands, neither the Rules of Court nor the Revised Internal Rules of the CA allows the remedy of petition for relief in the CA.

2. ID.; ID.; ID.; GROUNDS; LATE FILING OF PETITION FOR REVIEW DOES NOT AMOUNT TO EXCUSABLE NEGLIGENCE TO WARRANT RELIEF FROM JUDGMENT. — The late filing of the petition for review does not amount to excusable negligence. Petitioner's lack of devotion in discharging his duty, without demonstrating fraud, accident, mistake or excusable negligence, cannot be a basis for judicial relief. For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. The relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or mistaken mode of procedure for that matter; otherwise the petition for relief will be tantamount

to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel.

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Del Rosario & Del Rosario for respondents.

R E S O L U T I O N

REYES, R.T., *J.*:

A PETITION for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. It may be availed of only after a judgment, final order, or other proceeding was taken against petitioner in any court through fraud, accident, mistake, or excusable negligence.[1]

Before Us is a petition for relief from judgment[2] filed by Julio B. Purcon, seeking to set aside Our July 16, 2007 Resolution,[3] which denied his petition for review, as well as the October 9, 2007 Entry of Judgment.[4] He pleads for the Court's leniency on account of the negligence and inefficiency of his counsel, which resulted in the late filing of the petition and in filing defective pleadings within this Court.

The Antecedents

The case stemmed from a complaint filed by petitioner for reimbursement of medical expenses, sickness allowance and permanent disability benefits with prayer for compensatory, moral

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[1] *Dela Cruz v. Andres*, G.R. No. 161864, April 27, 2007, 522 SCRA 585.

[2] *Rollo*, pp. 3-37.

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

[4] *Id.* at 39-40.

and exemplary damages and attorney's fees before the Arbitration Branch of the National Labor Relations Commission (NLRC).

In his verified position paper, petitioner alleged that on January 28, 2002, respondent MRM Philippines, Inc. hired him as a seaman on board the vessel M/T SARABELLE 2. He signed a contract for three (3) months with a monthly salary of $584.00. According to petitioner, his work involved a day-to-day activity that required exertion of strenuous effort, and that he often worked overtime due to the pressure of his work. His contract was extended for another three (3) months. On the second week of June 2002, he felt an excruciating pain in his left testicle. After being examined by a doctor at the port of France, he was diagnosed with hernia. On June 26, 2002, he was repatriated due to his ailment.

Upon petitioner's return to the Philippines, he was examined by Dr. Alegre, the company physician, who prescribed certain medication. On July 24, 2002, Dr. Alegre declared that he was fit to resume work. When he reported to MRM Philippines, Inc. hoping to be re-hired for another contract, he was told that there was no vacancy for him.

On September 17, 2003, he consulted Dr. Efren R. Vicaldo, an internist-cardiologist of Philippine Heart Center. On March 3, 2004, after a thorough medical examination and evaluation, he was diagnosed with EPIDIDYMITIS, LEFT; UPPER RESPIRATORY TRACT INFACTION WITH INPEDIMENT GRADE XIV.

Respondents, on the other hand, countered that since petitioner's ailment, hernia, is not work-related, he is not entitled to disability benefit and related claims. In fact, he was declared fit to resume work on July 23, 2002 by the company-designated physician. Respondents likewise argued that his ailment is not to be considered a permanent disability as this is easily correctable by simple surgery. More importantly, petitioner signed a Quitclaim and Release which was notarized.

On March 31, 2005, Labor Arbiter Donato G. Quinto, Jr. rendered its decision[5] dismissing the complaint for utter lack of merit. The Labor Arbiter explained that petitioner was fit to resume work as a seafarer as of July 23, 2002 as his "hernia" was already cured or non-existent. In fact, petitioner was ready to resume work. Unfortunately, he was not accommodated due to lack of vacancy. The fact that he was not re-hired by respondent did not mean that he was suffering from disability.

On May 5, 2005, complainant-appellant (petitioner) filed a memorandum of appeal with the NLRC Third Division.

On September 30, 2005, the NLRC Third Division issued a resolution[6] as follows:

> WHEREFORE, the appeal is DISMISSED for lack of merit and the assailed decision dated March 31, 2005 is hereby AFFIRMED.
>
> SO ORDERED.[7]

On December 20, 2005, the motion for reconsideration was dismissed for lack of merit. On January 27, 2006, the NLRC resolution became final and executory and was recorded in the Book of Entries of Judgments.

On March 2, 2006, petitioner filed a petition for *certiorari* under Rule 65 of the Revised Rules of Court with the Court of Appeals (CA). However, on June 7, 2006, the CA dismissed the case due to formal infirmities. Petitioner's motion for reconsideration was denied. On September 29, 2006, the CA resolution became final and executory.

On May 9, 2007, petitioner filed with this Court a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the June 7, 2006 and September 5, 2006 Resolutions of the CA, which dismissed his petition for *certiorari*.

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[5] *Id.* at 45-51.

[6] *Id.* at 54-64.

[7] *Id.* at 63.

In Our Resolution[8] dated July 16, 2007, We denied the petition for the following reasons: (1) the petition was filed beyond the reglementary period of fifteen (15) days fixed in Section 2, Rule 45 in relation to Section 5(a), Rule 56, 1997 Rules of Civil Procedure, as amended; (2) failure to pay on time docket and other fees and deposit for costs in violation of Section 3, Rule 45, in relation to Section 5(c) of Rule 56; and (3) insufficient or defective verification under Section 4, Rule 7.

We likewise held that petitioner failed to sufficiently show that the CA committed any reversible error in the challenged resolutions as to warrant the exercise of this Court's discretionary appellate jurisdiction. He was not able to convince this Court why the actions of the Labor Arbiter, the NLRC and the CA, which have passed upon the same issue, should be reversed. Consequently, on October 9, 2007, an Entry of Judgment was issued.

On May 6, 2008, petitioner filed the instant petition for relief from judgment interposing the following grounds:

I. The Honorable Labor Arbiter committed a GROSS MISTAKE when he based his decision on the fit to work certification issued by the company-designated physician and on the Quitclaim and Release executed by the complainant;

II. The Honorable Labor Arbiter further committed a GROSS MISTAKE when he adopted the irrelevant jurisprudence cited by the respondents and by adopting it in his decision;

III. The Honorable NLRC Third Division also committed a GROSS MISTAKE when it affirms the ERRONEOUS decision of the Honorable Labor Arbiter;

IV. The factual findings of the Honorable Labor Arbiter, and the Honorable NLRC Third Division, are not based on substantial evidence and that their decisions are contrary to the applicable law and jurisprudence; and

V. The collaborating counsel of the petitioner committed a GROSS MISTAKE in filing defective pleadings to the prejudice of the herein petitioner.[9]

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

[9] *Id.* at 4-5.

The threshold issue before Us is — Can petitioner avail of a petition for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure from Our resolution denying his petition for review?

We answer in the negative. **A petition for relief from judgment is not an available remedy in the Supreme Court.**

First, although Section 1 of Rule 38 states that when a judgment or final order is entered through fraud, accident, mistake, or excusable negligence, a party in any court may file a petition for relief from judgment, this rule must be interpreted in harmony with Rule 56, which enumerates the original cases cognizable by the Supreme Court, thus:

> Section 1. *Original cases cognizable*. — Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court.

A petition for relief from judgment is **not** included in the list of Rule 56 cases originally cognizable by this Court.

In *Dela Cruz v. Andres*,[10] We reiterated Our pronouncement in *Mesina v. Meer*,[11] that a petition for relief from judgment is not an available remedy in the Court of Appeals and the Supreme Court. The Court explained that under the 1997 Revised Rules of Civil Procedure, the petition for relief must be filed within sixty (60) days after petitioner learns of the judgment, final order or other proceeding to be set aside and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting petitioner's good and substantial cause of action or defense, as the case may be. Most importantly, it should be filed with the same court which rendered the decision, *viz.*:

> Section 1. *Petition for relief from judgment, order, or other proceedings*. — When a judgment or final order is entered, or any

[10] *Supra* note 1.

[11] G.R. No. 146845, July 2, 2002, 383 SCRA 625.

other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.[12] (Underscoring supplied)

Second, while Rule 38 uses the phrase "any court," **it refers only to Municipal/Metropolitan and Regional Trial Courts**.

As revised, Rule 38 radically departs from the previous rule as it now allows the Metropolitan or Municipal Trial Court which decided the case or issued the order to hear the petition for relief. Under the old rule, a petition for relief from the judgment or final order of Municipal Trial Courts should be filed with the Regional Trial Court, *viz.*:

Section 1. *Petition to Court of First Instance for relief from judgment of inferior court*. — When a judgment is rendered by an inferior court on a case, and a party thereto by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits.

Section 2. *Petition to Court of First Instance for relief from the judgment or other proceeding thereof*. — When a judgment order is entered, or any other proceeding is taken against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

The procedural change in Rule 38 is in line with Rule 5, prescribing uniform procedure for Municipal and Regional Trial Courts[13] and designation of Municipal/Metropolitan Trial Courts as courts of record.[14]

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[12] RULES OF COURT, Rule 38, Sec. 1.

[13] Section 1. *Uniform procedure*. — The procedure in the Municipal Trial Courts shall be the same as in the Regional Trial Court, except (a) where a particular provision expressly or impliedly applies only to either of said courts, or (b) in civil cases governed by the Rule on Summary Procedure.

[14] See Republic Act No. 7691 (1994); Regalado, F.D., *Remedial Law Compendium* (2002), Vol. 1, p. 400.

Third, the procedure in the CA and the Supreme Court are governed by separate provisions of the Rules of Court.[15] It may, from time to time, be supplemented by additional rules promulgated by the Supreme Court through resolutions or circulars. As it stands, neither the Rules of Court nor the Revised Internal Rules of the CA[16] allows the remedy of petition for relief in the CA.

There is no provision in the Rules of Court making the petition for relief applicable in the CA or this Court. The procedure in the CA from Rules 44 to 55, with the exception of Rule 45 which pertains to the Supreme Court, identifies the remedies available before said Court such as annulment of judgments or final orders or resolutions (Rule 47), motion for reconsideration (Rule 52), and new trial (Rule 53). Nowhere is a petition for relief under Rule 38 mentioned.

If a petition for relief from judgment is not among the remedies available in the CA, **with more reason** that this remedy cannot be availed of in the Supreme Court. This Court entertains only questions of law. A petition for relief raises questions of facts on fraud, accident, mistake, or excusable negligence, which are beyond the concerns of this Court.

Nevertheless, even if We delve into the merits of the petition, the same must still be dismissed. The late filing of the petition for review does not amount to excusable negligence. Petitioner's lack of devotion in discharging his duty, without demonstrating fraud, accident, mistake or excusable negligence, cannot be a basis for judicial relief. For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown.

The relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effects of the judgment when

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[15] See Rules 44-56.

[16] As amended by Supreme Court Resolutions dated October 20, 1988, November 3, 1988, February 27, 1991, April 1, 1992, November 24, 1992, and June 14, 1993.

the loss of the remedy of law was due to his own negligence, or mistaken mode of procedure for that matter; otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel.

In exceptional cases, when the mistake of counsel is so palpable that it amounts to gross negligence, this Court affords a party a second opportunity to vindicate his right. But this opportunity is unavailing in the instant case, especially since petitioner has squandered the various opportunities available to him at the different stages of this case. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.

Finally, it is a settled rule that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to mistaken mode of procedure by counsel.[17]

ACCORDINGLY, the petition is *DISMISSED*.

SO ORDERED.

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

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[17] *Espinosa v. Yatco*, G.R. No. L-16435, January 31, 1963, 7 SCRA 78.

SECOND DIVISION

[G.R. No. 169558. September 29, 2008]

PHILIPPINE CROP INSURANCE CORPORATION, *petitioner, vs.* **COURT OF APPEALS, HON. JUDGE ELMO N. ALAMEDA, RENATO S. ALLAS, LYDIA H. ALMERON, WILLIE U. ANTALAN, RAMON P. AQUINO, NESTOR M. DE ROMA, ROBERTO T. FERI, OSMUNDO M. GUMASING, ROSA P. CALUBAQUIB, TELITA C. BARASI, PATROCINIA D. HERRERO, CHARITO A. MALLILLIN, TERESITA A. CARANGUIAN, DELFIN B. CRUZ, ROMEO P. MAPAGU, ESTRELLA MAY K. MIGUEL, VICENTE T. PADDAYUMAN, DELFRANDO T. SEVILLA, ELVIRA SIMANGAN-INTERIOR, CELESTINO P. TABANIAG and CIRILO B. TEGA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS; PRESENT IN CASE AT BAR. — A complaint states a cause of action only when it has its three indispensable elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. These elements are present in the case at bar. Private respondents have sufficiently alleged in their complaint that (1) they are entitled to the subject benefits under Rep. Act No. 6758; (2) petitioner is bound by said law to pay the subject benefits; and (3) petitioner has refused to pay said benefits.

2. ID.; ID.; ID.; DETERMINED FROM THE ALLEGATIONS OF A COMPLAINT, NOT FROM ITS CAPTION. — Although the complaint is labeled as an action for specific performance thereby giving the impression that it is based on contract, the allegations therein reveal that the action is based on law, *i.e.*,

> Rep. Act No. 6758. We have ruled that the cause of action is determined from the allegations of a complaint, not from its caption. Moreover, the focus is on the sufficiency, not the veracity, of the material allegations. The determination is confined to the four corners of the complaint and nowhere else.

APPEARANCES OF COUNSEL

Office of the General Counsel (PCIC) for petitioner.
Vicente D. Lasam and Associates for respondents.

D E C I S I O N

QUISUMBING, *J.*:

In this special civil action for *certiorari* before us, petitioner seeks the nullification of the Decision[1] dated January 27, 2005 and the Resolution[2] dated August 4, 2005 of the Court of Appeals in CA-G.R. SP No. 77773, which had dismissed its earlier petition for *certiorari* assailing the Order[3] dated May 13, 2003 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 5, in Civil Case No. 6123.

The facts in this case are as follows.

Petitioner Philippine Crop Insurance Corporation (PCIC) is a government-owned and controlled corporation engaged in the business of crop insurance. Private respondents Renato S. Allas, Lydia H. Almeron, Willie U. Antalan, Ramon P. Aquino, Nestor M. de Roma, Roberto T. Feri, Osmundo M. Gumasing, Rosa P. Calubaquib, Telita C. Barasi, Patrocinia D. Herrero, Charito A. Mallillin, Teresita A. Caranguian, Delfin B. Cruz, Romeo P. Mapagu, Estrella May K. Miguel, Vicente T. Paddayuman,

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[1] *Rollo*, pp. 26-33. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Mario L. Guariña III and Jose C. Mendoza concurring.

[2] *Id.* at 34.

[3] Records, pp. 57-57A.

Delfrando T. Sevilla, Elvira Simangan-Interior, Celestino P. Tabaniag and Cirilo B. Tega, Jr. are all retired employees and officers of petitioner.

Prior to the effectivity on July 1, 1989 of Republic Act No. 6758,[4] or the Compensation and Position Classification Act of 1989, private respondents were employed with PCIC and were receiving cost of living allowance (COLA) equivalent to 40% of their basic salary, amelioration allowance equivalent to 10% of their basic salary and additional COLA known as equity pay.

To implement the law, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10[5] specifying that the COLA, amelioration allowance and equity pay previously granted to government employees shall be deemed included in the basic salary. It disallowed without qualification all allowances and fringe benefits granted to said employees on top of their basic salary effective November 1, 1989. Pursuant to DBM-CCC No. 10, petitioner stopped paying the aforecited benefits to private respondents.

On August 12, 1998, the Supreme Court nullified DBM-CCC No. 10 in *De Jesus v. Commission on Audit*[6] due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country.[7]

On February 4, 2003, private respondents instituted an action for specific performance against petitioner before the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5. They prayed

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[4] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES, approved on August 21, 1989.

[5] OFFICIAL GAZETTE, Vol. 95, No. 9, March 1, 1999, pp. 1-40 (RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM PRESCRIBED UNDER R.A. NO. 6758 FOR GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS [GOCCS] AND FINANCIAL INSTITUTIONS [GFIs], effective on July 1, 1989).

[6] G.R. No. 109023, August 12, 1998, 294 SCRA 152.

[7] *Id.* at 158.

that petitioner be ordered to pay them the subject benefits from July 1, 1989 up to their respective retirement dates or the publication of DBM-CCC No. 10, whichever is earlier. They alleged that the nullification of DBM-CCC No. 10 rendered the integration of the subject benefits into their salaries ineffective. They added that the Office of the Government Corporate Counsel[8] and the Commission on Audit[9] sustained their entitlement to the subject benefits. But petitioner still refused to pay them.

On March 11, 2003, petitioner filed a Motion to Dismiss[10] on the grounds that (1) the complaint stated no cause of action since the parties have no contractual relationship; (2) the subject benefits have already been integrated into the basic salaries of private respondents; and (3) private respondents' reliance on the *De Jesus* case was misplaced since said case involved the payment of a different benefit which was not integrated into the basic salaries of the employees concerned.

In their opposition,[11] private respondents averred that the sufficiency of the complaint should be tested based on the strength of its allegations and no other. They also argued that there was a contractual relationship between the parties since their claim for the subject benefits accrued when they were still petitioner's employees.

On May 13, 2003, the trial court issued an Order denying the motion to dismiss. It noted that the allegations in the complaint for specific performance constituted a valid cause of action on which the court could render a valid judgment. It held that where the allegations are sufficient but the veracity of the facts is assailed, the motion to dismiss should be denied.

Dissatisfied, petitioner filed a special civil action for *certiorari*[12] with the Court of Appeals. It argued that public respondent

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[8] Records, pp. 9-16.

[9] *Id.* at 17-22 and 23-25.

[10] *Id.* at 32-37.

[11] *Id.* at 50-53.

[12] *Id.* at 58-72.

judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying its motion to dismiss despite the fact that (1) the complaint stated no cause of action since the parties have no contractual relationship; (2) private respondents failed to exhaust all administrative remedies; (3) the claim was barred by laches; (4) the claim had already been paid in full since the subject benefits were already integrated into the basic salaries of private respondents; and (5) the *De Jesus* case did not invalidate the mandatory consolidation of allowances and compensation of government employees.

The appellate court dismissed the petition and thus affirmed that the complaint stated a cause of action. *First*, it ruled that while the complaint is labeled as an action for specific performance thereby giving the impression that it is based on contract, a close reading of its allegations reveals that the action is based on law, particularly Section 12[13] of Rep. Act No. 6758. In determining the sufficiency of a cause of action, only the facts alleged in the complaint and no other should be considered. Thus, it is the body of the complaint and not its title which defines a cause of action. *Second*, it held that private respondents have sufficiently alleged in their complaint facts constituting the elements of a cause of action: (1) that they are entitled to the subject benefits under Rep. Act No. 6758; (2) that petitioner is bound by said law to pay the subject benefits; and (3) that petitioner has refused to pay said benefits. *Third*, it declared

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[13] Sec. 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

that the doctrine of exhaustion of administrative remedies does not apply since private respondents' claim to the subject benefits involves a purely legal issue. *Fourth*, it noted that private respondents made several demands on petitioner to pay the subject benefits but they were compelled to commence legal action only after petitioner refused to heed their demands. Hence, they are not barred by laches since they have not slept on their rights.

In sum, the appellate court ruled that public respondent judge did not commit grave abuse of discretion in denying petitioner's motion to dismiss. The decretal portion of the decision reads:

> WHEREFORE, for lack of merit, the instant petition is **DENIED** due course and, accordingly, **DISMISSED**. The assailed order of the Regional Trial Court of Cagayan (Tuguegarao, Branch 5) dated May 13, 2003 is hereby **AFFIRMED**.
>
> SO ORDERED.[14]

In the present petition, petitioner submits these issues for our consideration:

I.

THERE WAS NO CAUSE OF ACTION, ABSENT A BINDING CONTRACT BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENTS.

II.

THE ACTION FOR SPECIFIC PERFORMANCE IS CAPABLE OF PECUNIARY ESTIMATION. THERE WAS NO CAUSE OF ACTION BECAUSE THE PRIVATE RESPONDENTS FAILED AND OMITTED TO QUANTIFY THE AMOUNTS OF THEIR RESPECTIVE CLAIMS. ALSO, THE COURT DID NOT ACQUIRE JURISDICTION OVER THE CASE DUE TO NON-PAYMENT OF DOCKET FEES.

III.

THE PRIVATE RESPONDENTS EXPRESSLY ADMITTED THAT THEIR COLA, AMELIORATION ALLOWANCE AND EQUITY PAY

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[14] *Rollo*, p. 33.

WERE ALREADY PAID THRU SALARY INTEGRATION BY VIRTUE OF BOARD RESOLUTION NO. 89-055 AND 90-002.

IV.

THE INTEGRATION OR CONSOLIDATION OF THE COLA, AMELIORATION ALLOWANCE AND EQUITY PAY IS MANDATED BY SECTION 12 OF R.A. [NO.] 6758, NOTWITHSTANDING THE *DE JESUS* RULING DECLARING THE NULLITY OF DBM CIRCULAR NO. 10 DUE TO NON-PUBLICATION.

V.

THE ISSUE INVOLVED IN THE CASE IS NOT PURELY LEGAL AND THE PRIVATE RESPONDENTS HAVE NOT EXHAUSTED ALL ADMINISTRATIVE REMEDIES IN THE DEPARTMENT OF BUDGET AND MANAGEMENT.

VI.

THE CLAIM OF THE PRIVATE RESPONDENTS ARE DEEMED TO [HAVE] BEEN ABANDONED AND ARE NOW BARRED BY LACHES AFTER A PERIOD OF INACTION FOR MORE THAN 14 YEARS.[15]

Petitioner contends that a complaint for specific performance implies that the basis is a contractual relationship between the parties. In this case, private respondents failed to make any allegation, much less produce any evidence, to support the existence of any express contract with petitioner. Thus, the complaint should have been dismissed outright for lack of or failure to state a cause of action. Petitioner adds that private respondents failed to specify the amounts they are claiming although the same were capable of pecuniary estimation. In that way, they were able to avoid the payment of the correct docket fees, which is also a ground to dismiss their complaint. Petitioner also argues that private respondents themselves admitted that their COLA, amelioration allowance and equity pay were already paid through salary integration. Moreover, the validity of Rep. Act No. 6758 and the integration of the COLA, amelioration allowance and equity pay in private respondents'

[15] *Id.* at 9.

salaries remained valid notwithstanding the *De Jesus* ruling. Petitioner further argues that the issues in this case are not purely legal and private respondents have not exhausted all administrative remedies. Finally, petitioner posits that private respondents' claims are deemed to have been abandoned and barred by laches after a period of inaction for more than 14 years.

Private respondents counter that the present petition is improper since it seeks to reverse the decision of the Court of Appeals on questions of law which is not covered by Rule 65. Further, the issues raised have already been passed upon by the appellate court, some of which are defenses which should be threshed out during the trial proper. In any event, private respondents insist that their complaint stated a cause of action since it sought to compel petitioner to pay their COLA, amelioration allowance and equity pay.

Notwithstanding petitioner's formulation of six issues, we only have to resolve one issue, *i.e.*, whether the Court of Appeals gravely erred and abused its discretion when it affirmed public respondent judge's order denying petitioner's motion to dismiss. The appellate court upheld the public respondent judge's ruling that the complaint stated a cause of action.

Section 1,[16] Rule 8 of the Rules of Court requires the complaint to contain a plain, concise and direct statement of the ultimate facts upon which the plaintiff bases his claim. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate. A complaint states a cause of action only when it has its three indispensable elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the

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[16] Section 1. *In general*. — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated.

part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[17]

These elements are present in the case at bar. Private respondents have sufficiently alleged in their complaint that (1) they are entitled to the subject benefits under Rep. Act No. 6758; (2) petitioner is bound by said law to pay the subject benefits; and (3) petitioner has refused to pay said benefits.

Although the complaint is labeled as an action for specific performance thereby giving the impression that it is based on contract, the allegations therein reveal that the action is based on law, *i.e.*, Rep. Act No. 6758. We have ruled that the cause of action is determined from the allegations of a complaint, not from its caption.[18] Moreover, the focus is on the sufficiency, not the veracity, of the material allegations. The determination is confined to the four corners of the complaint and nowhere else.[19]

We need not pass upon the other issues raised by petitioner since the same are matters best threshed out in a hearing on the merits. Reason dictates that the parties proceed with the trial where they can present their respective evidence.

Everything considered, there was no grave abuse of discretion by the Court of Appeals when it affirmed public respondent judge's order denying petitioner's motion to dismiss.

WHEREFORE, the Decision dated January 27, 2005 and the Resolution dated August 4, 2005 of the Court of Appeals in

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[17] *Ceroferr Realty Corporation v. Court of Appeals*, G.R. No. 139539, February 5, 2002, 376 SCRA 144, 148; See *Malicdem v. Flores*, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 259.

[18] *Benito v. Saquitan-Ruiz*, G.R. No. 149906, December 26, 2002, 394 SCRA 250, 251; *Gochan v. Gochan*, G.R. No. 146089, December 13, 2001, 372 SCRA 256, 263-264.

[19] *Malicdem v. Flores*, *supra*.

CA-G.R. SP No. 77773 are *AFFIRMED*. Accordingly, the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5, is hereby *DIRECTED* to continue with the proceedings in Civil Case No. 6123 and decide the said case with dispatch.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172306. September 29, 2008]

MICHAEL V. SANTOS, *petitioner, vs.* **SHING HUNG PLASTICS, CO., INC. and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMINISTRATIVE PROCEEDINGS; QUANTUM OF PROOF REQUIRED; CASE AT BAR. — In administrative proceedings, the law does not require proof beyond reasonable doubt. Substantial evidence suffices. The Court finds that the corporation had established reasonable grounds-bases of its decision finding petitioner unworthy of the trust and confidence his position demands.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CONFIDENTIAL EMPLOYEES, DEFINED. — For the purpose of applying the provisions of the Labor Code on who may join unions of the rank-and-file employees, jurisprudence defines "confidential employees" as those who "assist or act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations."

3. ID.; ID.; POST-EMPLOYMENT; TERMINATION BY EMPLOYER; LOSS OF CONFIDENCE AS A JUST CAUSE; COVERED EMPLOYEES. — For the purpose of applying the Labor Code provision on loss of confidence as a just cause for the dismissal of an employee, jurisprudence teaches that: "x x x [L]oss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence *or* to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, *i.e.*, those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and [to] the second class belong cashiers, auditors, property custodians, *etc.*, or **those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property**."

APPEARANCES OF COUNSEL

Noel V. Neri for petitioner.
Angara Abello Concepcion Regala & Cruz for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Shing Hung Plastics Co., Inc. (the corporation) hired on August 2, 2000 Michael V. Santos (petitioner) as administrative assistant whose responsibilities included purchasing equipment and supplies of the corporation.

On April 3, 2002, the corporation dismissed petitioner following which or on April 4, 2002, he filed a Complaint[1] for illegal dismissal against it, its manager Ching Chuan Chueh (Chueh), and its vice president Mu-Tsun Chan (Chan).

In his position paper,[2] petitioner gave the following antecedent facts:

[1] NLRC records, Vol. I, p. 1.

[2] *Id.* at 13-26 inclusive of annexes.

On February 18, 2002, he was, by Memorandum, asked to explain within 24 hours why, in the purchase of silkscreen and paint thinner from JPN, Inc., only acknowledgment receipts, instead of official receipts, were received and recorded by the corporation's accounting department.

By letter[3] of February 19, 2002, he explained that the purchase of the above-stated items were urgent, and the thinner was purchased from JPN Inc., instead of the corporation's then supplier Alto Chemicals, because the former charged a lower price.

On March 11, 2002, Chueh ordered him to rent a forklift and crane to move a 26-ton machinery of the corporation, hence, he asked the firm Bormahueco for a quotation thereof. The quotation given by Bormahueco was found to be too high by Chueh who thus ordered him to get one from another firm. Roos Industrial Construction, Inc. (Roos) quoted a lower rental rate of ₱28,000, hence, he, on the instruction of Chan and Chueh, asked the accounting department to issue a check for the purpose.

The accounting department thus issued a check payable to the order of Roos and its Forklift Rental Manager Oscar Deiparine (Deiparine), not for ₱28,000 but for ₱27,440, a 2% rental and service tax having been debited therefrom. He thereupon delivered the check to Deiparine.

Rumors thereafter circulated that he obtained a ₱5,000 commission from the transaction with Roos, drawing Chueh and Chan to transfer him from the Administration Department to the Warehouse Department.

On April 2, 2002, he was informed of the termination of his employment on account of "money involvement with suppliers like JPN and Roos *etc*."[4]

For its part, the corporation through Chan and Chueh claimed in its Position Paper[5] that, *inter alia,* JPN, Inc. itself complained

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

[4] *Id.* at 27.

[5] *Id.* at 29-64 inclusive of annexes.

of "illegal sales" to the corporation which prompted it to conduct an audit of its transactions with JPN, Inc.; that acknowledgment letters[6] bearing JPN, Inc.'s letterhead and illegible signatures, instead of official receipts, covered the questioned transactions, which letters did not even indicate control or invoice numbers; that only two transactions between the corporation and JPN, Inc. were covered by official receipts,[7] hence, the memorandum requiring petitioner to explain the "irregularities"; and that the corporation inquired from Alto Chemicals to confirm petitioner's claim that JPN, Inc. charged lower prices and discovered that he had lied.[8]

With regard to the transaction with Roos, the corporation and its officers presented an affidavit of Roos' Forklift Rental Manager Deiparine stating that petitioner offered the transaction to him in exchange for a commission of ₱5,000[9] which petitioner, on board the corporation's Starex vehicle,[10] collected on March 14, 2002. The corporation, in this connection, claimed that the gate pass it issued to petitioner on March 14, 2002 indicated that he was going to buy black ink and other supplies.[11]

The corporation went on to claim as follows:

Upon investigation by Chueh, it was found out that petitioner manipulated the price of purchased items and earned commissions therefrom;[12] that petitioner had been an employee of JPN, Inc. "but was forced to resign due to some irregularities";[13] and that petitioner refused to sign the termination letter and to receive his salary and other benefits, and had not been reporting for work since April 3, 2002.

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[6] *Vide id.* at 39-46.

[7] *Vide id.* at 54-55.

[8] *Vide id.* at 57, 59.

[9] *Vide id.* at 60.

[10] *Ibid.*

[11] *Vide id.* at 61.

[12] *Vide id.* at 31-32.

[13] *Id.* at 38.

By Decision[14] of January 30, 2004, the Labor Arbiter found petitioner to have been illegally dismissed. He thus ordered the corporation to reinstate petitioner and pay his full backwages, unpaid salary, moral and exemplary damages, and attorney's fees.

On appeal,[15] the National Labor Relations Commission (NLRC), by Resolution of August 20, 2004, found petitioner's dismissal for just cause but that due process requirements were not complied with.[16] The NLRC thus set aside the Labor Arbiter's decision but awarded petitioner "one (1) month salary as indemnity, and his unpaid salary."[17]

His Motion for Reconsideration[18] having been denied[19] by the NLRC by Resolution of May 18, 2005, petitioner filed a Petition for *Certiorari*[20] before the Court of Appeals. The Court of Appeals affirmed the NLRC Resolutions of August 20, 2004 and May 18, 2005 but increased the amount of indemnity to ₱30,000,[21] following *Agabon v. NLRC*[22] awarding ₱30,000 nominal damages to an employee who is dismissed for just cause but without compliance with due process requirements.[23]

Hence, the present Petition for Review on *Certiorari*[24] faulting the appellate court

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[14] *Id.* at 99-106.

[15] *Id.* at 120-144.

[16] Decision penned by Commissioner Ernesto C. Verceles, with the concurrence of Commissioners Lourdes C. Javier and Tito F. Genilo. *Id.* at 239-249.

[17] *Id.* at 249.

[18] *Id.* at 256-264.

[19] *Id.* at 265-266.

[20] CA *rollo*, pp. 2-18.

[21] Decision of January 24, 2006, penned by Court of Appeals Associate Justice Noel G. Tijam, with the concurrence of Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo. *Id.* at 208-221.

[22] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 611-617.

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

[24] *Rollo*, pp. 8-30.

1. . . . in reversing the Decision of the Labor Arbiter finding the dismissal illegal, despite blatant failure of private respondents to show an iota of evidence proving the allegation justifying loss of trust and confidence as basis for dismissal.

2. . . . in granting only indemnity of ₱30,000.00 to herein petitioner instead of the correct and appropriate award with full backwages as correctly found by the Labor Arbiter *a quo*.[25] (Emphasis in the original)

The issue in the main is whether petitioner was dismissed for just cause.

Petitioner, claiming that his dismissal was based on an unsubstantiated allegation of loss of trust and confidence,[26] asserts that he was dismissed "due to job-related jealousy, which was further bolstered and aggravated upon by Mr. Oscar Deiparine's connivance with the Respondents."[27]

The petition fails.

By its evidence, the corporation duly established the acts imputed to petitioner which rendered him unworthy of the trust and confidence demanded of his position.[28]

Thus, in addition to its evidence reflected above, it presented copies of the certification-letters dated January 5, 2001, March 26, 2001, July 21, 2001, August 14, 2001 and November 19, 2001 issued by JPN, Inc. acknowledging receipt of payment of silkscreens; November 2, 2001 letter acknowledging receipt of payment for silkscreen cleaning agent; and January 8, 2002 letter acknowledging receipt of payment for mixed thinner.[29] The JPN, Inc. letters which were printed on its stationeries bear illegible signatures, and differ from JPN, Inc.'s official receipts.[30]

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[25] *Id.* at 19.

[26] *Ibid.*

[27] *Id.* at 19-21.

[28] *Ibid.*

[29] NLRC records, Vol. I, pp. 39-46.

[30] *Vide id.* at 54-55.

And the signatures to the certifications-letters have varying writing strokes. Vice President and Treasurer of JPN, Inc. even confirmed that two of its employees have been engaged in illegal sales of its supplies to petitioner and that petitioner himself used to be a JPN, Inc. employee but was forced to resign due to irregularities.[31]

While petitioner did not deny having submitted the letter-certifications-acknowledgement receipts, he claimed that he purchased the silkscreen and thinner during times of urgent need when no official receipts could be issued.[32]

Petitioner further claimed that JPN, Inc. sold thinner at ₱500 per gallon lower than the ₱1,500 price of the corporation's usual supplier, Alto Chemicals.[33] The corporation controverted this claim, however, by presenting a document from Alto Chemicals quoting the price of thinner at ₱300 per gallon.[34]

In administrative proceedings, the law does not require proof beyond reasonable doubt. Substantial evidence suffices.[35] The Court finds that the corporation had established reasonable grounds-bases of its decision finding petitioner unworthy of the trust and confidence his position demands.

Petitioner, at all events, argues that respondent failed to prove its claim that he is a confidential employee, hence, his tenure depended not on the trust and confidence he enjoyed from it. He advances that he is "**not involved in the labor relation matter[s] in the respondent company**."[36]

Petitioner's position fails. For the purpose of applying the provisions of the Labor Code on who may join unions of the rank-and-file employees, jurisprudence defines "confidential

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[31] *Id.* at 38.

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

[33] *Ibid.*

[34] *Id.* at 59.

[35] *Vide Manalo v. Roldan-Confesor*, G.R. No. 102358, November 19, 1992, 215 SCRA 808, 818-819.

[36] *Rollo*, pp. 22-23.

employees" as those who "assist or act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations."[37] However, for the purpose of applying the Labor Code provision on loss of confidence as a just cause for the dismissal of an employee,[38] jurisprudence teaches that:

> x x x [L]oss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, *i.e.*, those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and [to] the second class belong cashiers, auditors, property custodians, *etc*., or **those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property**.[39] (Emphasis and underscoring supplied)

As stated early on, petitioner's duties included purchasing supplies and equipment of the corporation. He thus regularly handled significant amounts of money and property in the normal and routine exercise of his functions. His position was thus one of trust and confidence, loss of which is a just cause for dismissal.

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED*.

SO ORDERED.

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

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[37] *Vide San Miguel Corp. Supervisors and Exempt Employees Union v. Hon. Laguesma,* 343 Phil. 143, 149 (1997).

[38] *Vide* Labor Code, Article 282 (c).

[39] *Mabeza v. National Labor Relations Commission,* G.R. No. 118506, April 18, 1997, 271 SCRA 670, 682.

SECOND DIVISION

[G.R. No. 172744. September 29, 2008]

MARVIN ANGELES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION OF THE TESTIMONIES OF WITNESSES BY THE TRIAL COURT IS RECEIVED ON APPEAL WITH THE HIGHEST RESPECT; RATIONALE. — The Court agrees with the observation of the Court of Appeals that there is no showing that the RTC was arbitrary in its findings of fact and appreciation of evidence, neither did it overlook nor ignore any substantial facts. It is a well-settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not. We see no reason to deviate from this rule.

2. ID.; ID.; ID.; INCONSISTENCIES AND DISCREPANCIES IN THE TESTIMONY REFERRING TO MINOR DETAILS, AND NOT ON THE BASIC ASPECTS OF THE CRIME, DO NOT IMPAIR THE WITNESS' CREDIBILITY; CASE AT BAR. — A review of the records of this case shows that the RTC did not err in giving credence to the testimonies of the prosecution's witnesses. The testimonies of Calma and Zuñiga do not suffer from any serious and material contradictions that can detract from their credibility. Their testimonies are credible as they are replete with details and corroborated on material points by physical evidence and the testimonies of the other prosecution's witnesses. Dr. Celestino categorically testified that Calma was shot at the back and that without timely medical attention he would have died. Zuñiga and Marquez were also very categorical and frank in their testimonies identifying Angeles as the man who shot Calma and who, together with his companions riding in his owner-type jeep, chased Calma and Zuñiga after the shooting. The Court has repeatedly held that inconsistencies and discrepancies in the testimony referring

to minor details, and not on the basic aspects of the crime, do not impair the witness' credibility. These inconsistencies even tend to strengthen, rather than weaken, the credibility of witnesses as they negate any suspicion of a rehearsed testimony.

3. ID.; ID.; INSTANCES WHEN THE ADVERSE PRESUMPTION FROM A SUPPRESSION OF EVIDENCE IS NOT APPLICABLE; NO SUPPRESSION OF EVIDENCE IN CASE AT BAR. — There was no suppression of evidence by the prosecution when it did not present Dennis as one of its witnesses. The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. Besides, there is no showing that the witness who was not presented in court was not available to the accused. We reiterate the rule that the adverse presumption from a suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege. Moreover, if Angeles believed that the failure to present Dennis was because his testimony would be unfavorable to the prosecution, Angeles should have compelled Dennis' appearance by compulsory process to testify as his own witness or even as a hostile witness.

4. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENT ANY REASON OR MOTIVE FOR A PROSECUTION WITNESS TO PERJURE, THE LOGICAL CONCLUSION IS THAT NO SUCH MOTIVE EXISTS AND HIS TESTIMONY IS THUS WORTHY OF FULL FAITH AND CREDIT. — The defense failed to show any ill-motive on the part of the prosecution's witnesses which would discredit their testimonies on the events leading to the shooting of Calma. Angeles' futile attempt to point to Zuñiga as the shooter was a mere afterthought. Angeles and his companions did not report the incident to the police; and even if it were true that Calma and his friends were the ones who started the incident and fired the gunshots, none of them filed criminal charges against the latter. Absent any reason or motive for a prosecution witness to perjure, the logical

conclusion is that no such motive exists and his testimony is thus worthy of full faith and credit.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

The prosecution filed an information[1] for frustrated murder against petitioner Marvin Angeles (Angeles). Angeles pleaded not guilty during the arraignment.[2]

The prosecution presented four witnesses, namely: Cesar Calma (Calma), Arnold Zuñiga (Zuñiga), Louie Marquez (Marquez), and Dr. Luisito Celestino (Dr. Celestino), the attending physician of Calma. On the other hand, the defense also presented four witnesses, namely: Angeles himself, Prenil Bagang (Bagang), Danilo Alberto (Alberto) and Garcia Garcia (Garcia).

The prosecution was able to establish the following facts:

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[1] Records, p. 1. The accusatory portion reads:

That on or about July 18, 1996 at Morong, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said said [*sic*] accused, armed with a handgun, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously hit Cesar Y. Calma with the handle of said handgun on the face and sho[o]t him at the back of his body, thereby inflicting upon the said Cesar Y. Calma, serious physical injuries which could have caused his death, thus [*sic*] the said accused performing all the acts of execution which would produce the crime of Murder as a consequence but which, nevertheless did not produce it by reason or cause independent of his will, that is, the timely medical attendance rendered to the said Cesar Y. Calma, which prevented his death, to the damage and prejudice, nevertheless of the said victim.

CONTRARY TO LAW.

[2] *Id.* at 20.

At around 9 o'clock in the evening of 18 July 1996, Calma was drinking with Zuñiga and Marquez at a *videoke* bar owned by a certain Mr. Acleta in Sitio Ibabaw, National Road, Morong, Bataan. Angeles, Garcia, and two other people, who were all drunk, arrived at the *videoke* bar. Bagang, one of the customers of the *videoke* bar, was then outside the window of the establishment and he asked Zuñiga to call Garcia. Zuñiga acceded to Bagang's request by tapping Garcia on the shoulder and telling him that "*Brod, Prinil Bagang is calling for you*." Garcia thereafter went outside together with Angeles. Angeles then told Garcia and Bagang to fight against each other. Upon seeing Zuñiga, Garcia uttered, "*MARVIN, ito na lang*." Angeles responded by telling Garcia and Zuñiga to "*Go on fight each other.*"[3]

Zuñiga turned away but Garcia followed him and started punching him. Zuñiga parried the fist blows by raising his hands knowing that Garcia was already drunk, but he was hit nonetheless.[4]

When Calma saw Zuñiga receiving punches from Garcia, he went out to help Zuñiga by punching Garcia on the chest. During the fray, Angeles struck Calma on the right eye with the handle of the gun. Calma tried to turn away and run but Angeles shot him at the back. Zuñiga helped Calma escape from the shooting rampage of Angeles. While Zuñiga and Calma were escaping, Angeles shot them again but missed. Calma and Zuñiga then hid in a dry canal nearby, which was about two feet below the ground.[5]

Calma and Zuñiga saw Angeles and his companions, who were aboard Angeles' owner-type jeep, searching for them. Angeles and his companions left when they failed to find Zuñiga and Calma. Marquez was able to catch up with Zuñiga and Calma, and he helped Zuñiga bring Calma to the health center. The health center was not equipped to handle Calma's wound

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[3] TSN, 19 February 1997, pp. 3-6.

[4] *Id.* at 6-7.

[5] TSN, 8 January 1998, pp. 3-8; 19 February 1997, p. 7; 15 May 1997, pp. 4-7.

so he was referred to the provincial hospital. After Calma was brought to the hospital, Zuñiga and Marquez went to the police station to report the incident. They found out at the police station that a Councilman Ginete, who was also in the *videoke* bar when the incident happened, had already reported it to the police.

Calma was confined at the Bataan Provincial Hospital for one week. During the time that he was injured, Calma had to stop driving his tricycle through which he was supposedly earning ₱200.00 a day. It was stipulated by both the prosecution and defense that Calma spent ₱5,935.55 for his medical expenses including x-ray examination.[6]

Dr. Celestino, who attended to Calma at the Bataan Provincial Hospital for a gunshot wound and conducted a minor operation on him on 18 July 1996, issued a medico-legal certificate stating the injuries which Calma had sustained and testified on the extent of Calma's injuries.[7]

Angeles denied the prosecution's account of the incident. Bagang, Alberto, and Garcia tried to corroborate Angeles's testimony. The defense account of the incident is as follows: in the evening of 18 July 1996, after working overtime in Angeles' rice mill, Angeles asked Garcia and Alberto to accompany him to the town proper. They went to a newly opened *videoke* bar where he saw Calma's group, consisting of Dennis Ginete (Dennis), Marquez, and Zuñiga. While Angeles and his companions were waiting for their orders to arrive, Zuñiga approached their table. Zuñiga started cursing at Garcia and hit him with a beer bottle. Garcia and Alberto ran outside, and the group of Calma chased them. Calma and his companion were

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[6] TSN, 8 January 1998, p. 8; 19 February 1997, pp. 20-22.

[7] Records, p.168.

Parts of the certificate reads:

Physical injuries Sustained:
1. Gunshot wound back right 0.3 x 0.3 cm. in size (Point of Entry).
2. Contusion right mid. axillary line 6th. Interoostal (sic) space.
3. Lacerated wound right cheek.

able to catch up with Garcia. Calma was punching Garcia while the latter was parrying the fist blows. Angeles and Alberto had to face off with the other companions of Calma, and then engaged them in a fist fight.[8]

During the scrimmage, Angeles saw Zuñiga approach them with a gun so he shouted, "*Takbo at may baril*." Thereafter, Angeles turned his back to run. Angeles boarded his jeep, followed by Alberto. Angeles saw Zuñiga trying to hit Garcia with the gun. But instead of hitting Garcia, Calma was the one who was hit on the face when Garcia pushed him. Garcia ran and boarded the jeep. Calma and Zuñiga still ran after them while the jeep was running slow; Calma even tried to pull Garcia out of the jeep but failed. Afterwards, Angeles, Alberto and Garcia heard two gunshots, after which they saw, through the rear view mirror of Angeles' jeep, Calma lying prostrate on the ground and Zuñiga pointing the gun at them.[9]

According to Angeles, envy is the reason Calma filed the case against him instead of filing it against Zuñiga. Angeles, Calma and his companions were tricycle drivers but Angeles' financial condition improved. Angeles was able to establish a small business while Calma and his companions are still tricycle drivers. Also, Calma did not file a case against Garcia because the latter had no money. Angeles claimed that when his wife and mother went to the house of Calma to try to settle the case, the latter demanded ₱200,000.00.[10]

In its decision[11] dated 28 February 1999, the Regional Trial Court (RTC) of Balanga, Bataan, Branch 2 found Angeles guilty of frustrated homicide.[12] The RTC held that the guilt of Angeles

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[8] TSN, 10 December 1998, pp. 2-5; 15 July 1998, pp. 3-6.

[9] TSN, 10 December 1998, pp. 5-7; 15 July 1998, pp. 6-8.

[10] TSN, 10 December 1998, p. 8.

[11] *Rollo*, pp. 40-48. The decision was penned by Judge Lorenzo Silva, Jr.

[12] The dispositive portion reads as follows:

WHEREFORE, the guilt of Marvin Angeles as principal for the crime of frustrated homicide having been established beyond reasonable doubt, he is

was established by the direct and positive testimonies of the prosecution's witnesses. The attempt to pin the crime on Zuñiga is not worthy of credence for if it were true that Angeles and his companions were shot at by Zuñiga then they should have filed a criminal charge against the latter. Angeles sought reconsideration of the decision, but the RTC denied his motion in an order dated 23 June 1999.[13] It held that even if there were inconsistencies on certain parts of the testimonies of the prosecution's witnesses, such inconsistencies do not deviate from the established fact that it was Angeles who shot Calma. The case was appealed to the Court of Appeals.[14]

The Court of Appeals affirmed the RTC's ruling in a Decision dated 22 February 2006.[15] The appellate court sustained the RTC's assessment of the credibility of the witnesses for the prosecution and likewise gave them full faith and credence. Calma's testimony that Angeles was the one who shot him was positive and straightforward, and was corroborated by the other prosecution's witnesses. The Court of Appeals likewise did not find any material inconsistencies in the testimonies of the prosecution's witnesses.

Hence, the present petition for review before this Court.

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sentenced to an indeterminate penalty of two (2) years, four (4) months, and one (1) day *prision correccional* as minimum to eight (8) years and one (1) day *prision mayor* as maximum, with the accessory penalties provided by law.

The accused is further required to indemnify Cesar Y. Calma, the sum of ₱5,935.55 as actual damages, ₱30,000.00 as moral damages plus the costs.

The cash bond put up by the accused for his provisional liberty is cancelled.

SO ORDERED.

[13] *Id.* at 57.

[14] Records, pp. 314-315.

[15] *Rollo*, pp. 105-124. The decision was penned by Associate Justice Japar Dimaampao and concurred in by Associate Justices Martin Villarama, Jr. and Edgardo Sundiam. The dispositive portion reads as follows:

WHEREFORE, the Decision appealed from is hereby AFFIRMED *IN TOTO*.

SO ORDERED. (*Id.* at 123.)

The petition is unmeritorious.

The Court agrees with the observation of the Court of Appeals that there is no showing that the RTC was arbitrary in its findings of fact and appreciation of evidence, neither did it overlook nor ignore any substantial facts.[16] It is a well-settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[17] We see no reason to deviate from this rule.

A review of the records of this case shows that the RTC did not err in giving credence to the testimonies of the prosecution's witnesses. The testimonies of Calma and Zuñiga do not suffer from any serious and material contradictions that can detract from their credibility. Their testimonies are credible as they are replete with details and corroborated on material points by physical evidence and the testimonies of the other prosecution's witnesses. Dr. Celestino categorically testified that Calma was shot at the back and that without timely medical attention he would have died.[18] Zuñiga and Marquez were also very categorical and frank in their testimonies identifying Angeles as the man who shot Calma and who, together with his companions riding in his owner-type jeep, chased Calma and Zuñiga after the shooting. The Court has repeatedly held that inconsistencies and discrepancies in the testimony referring to minor details, and not on the basic aspects of the crime, do not impair the witness' credibility.[19] These inconsistencies even tend to strengthen, rather than weaken,

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[16] *Id.* at 113.

[17] *People v. Baccay*, 348 Phil. 322, 330 (1998). See also *People v. Bolivar, et al.*, 405 Phil. 55, 70 (2001), citing *People v. Rosario*, G.R. No. 122769, 3 August 2000, 337 SCRA 169; *People v. Baltazar*, 405 Phil. 340 (2001); and *People v. Mayor Sanchez*, 419 Phil. 808 (2001).

[18] TSN, 20 March 1997, pp. 4-5.

[19] *People v. Salamat*, G.R. No. 103295, 20 August 1993, 225 SCRA 499, 507, citing *People v. Dulay*, G.R. No. 92600, 18 January 1993.

the credibility of witnesses as they negate any suspicion of a rehearsed testimony.[20]

There was no suppression of evidence by the prosecution when it did not present Dennis as one of its witnesses. The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. Besides, there is no showing that the witness who was not presented in court was not available to the accused. We reiterate the rule that the adverse presumption from a suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege.[21] Moreover, if Angeles believed that the failure to present Dennis was because his testimony would be unfavorable to the prosecution, Angeles should have compelled Dennis' appearance by compulsory process to testify as his own witness or even as a hostile witness.

The defense failed to show any ill-motive on the part of the prosecution's witnesses which would discredit their testimonies on the events leading to the shooting of Calma. Angeles' futile attempt to point to Zuñiga as the shooter was a mere afterthought. Angeles and his companions did not report the incident to the police; and even if it were true that Calma and his friends were the ones who started the incident and fired the gunshots, none of them filed criminal charges against the latter. Absent any reason or motive for a prosecution witness to perjure, the logical

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[20] *People v. Utinas*, G.R. No. 105832, 22 December 1994, 239 SCRA 362, 370, citing *People v. Bautista*, G.R. No. 102618, 12 October 1993, 227 SCRA 182; *People v. Custodio*, G.R. No. 96230, 27 May 1991, 197 SCRA 538.

[21] *Calimutan v. People*, G.R. No. 152133, 9 February 2006, 482 SCRA 44, 64, citing *People v. Jumamoy*, G.R. No. 101584, 7 April 1993, 221 SCRA 333, 344-345.

conclusion is that no such motive exists and his testimony is thus worthy of full faith and credit.[22]

All told, the Court finds no reason to reverse the ruling of the RTC, as affirmed by the Court of Appeals. The RTC correctly applied the Indeterminate Sentence Law for frustrated homicide which is punishable by *prision mayor*, the penalty next lower in degree to *reclusion temporal* for consummated homicide, and properly sentenced Angeles to an indeterminate penalty of two (2) years, four (4) months, and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. The application of Article 250 of the Revised Penal Code[23] is not mandatory and there is no reason to disturb the ruling of the RTC. The awards of ₱5,935.55 medical expenses incurred by Calma as actual damages and ₱30,000.00 as moral damages are also proper.

WHEREFORE, the decision of the Regional Trial Court in Criminal Case No. 6457 is *AFFIRMED in toto*. Costs against petitioner.

SO ORDERED.

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

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[22] *People v. Mendoza*, 388 Phil. 279, 288 (2000), citing *People v. Acaya*, G.R. No. 108381, 7 March 2000, citing *People v. Rada*, G.R. No. 128181, 10 June 1999, p. 15 and *People v. Aguinas*, G.R. No. 121993, 12 September 1997, 279 SCRA 52, 65. See also *People v. Benito*, 363 Phil. 90, 98 (1999).

[23] Art. 250. *Penalty for frustrated parricide, murder, or homicide.* — The courts, in view of the facts of the case, **may** impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

The courts, considering the facts of the case, **may** likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes. (Emphasis supplied)

SECOND DIVISION

[G.R. No. 175175. September 29, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF ELEUTERIO CRUZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAWS; COMPULSORY ACQUISITION OF LANDS; PENDING THE PAYMENT OF JUST COMPENSATION, ACTUAL TITLE TO THE TENANTED LAND REMAINS WITH THE LANDOWNER. — The Court laid down in *Paris v. Alfeche* the applicability of P.D. No. 27 and E.O. No. 228 in relation to R.A. No. 6657 in the matter of the payment of just compensation. There the Court explained that while under P.D. No. 27 tenant farmers are already deemed owners of the land they till, they are still required to pay the cost of the land before the title is transferred to them and that pending the payment of just compensation, actual title to the tenanted land remains with the landowner.

2. ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION; LAW APPLICABLE; FACTORS. — In *Paris*, the application of the process of agrarian reform was still incomplete thus, the Court held therein that with the passage of R.A. No. 6657 before its completion, the process should now be completed under R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 applying only suppletorily. In *Land Bank of the Philippines v. Natividad*, the Court explained why the guidelines under P.D. No. 27 and E.O. No. 228 are no longer applicable to the delayed payment of lands acquired under P.D. No. 27, to wit: It would certainly be inequitable to determine just compensation based on the guideline provided by PD No. 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample. The decisive backdrop

of the instant case coincides with that in *Paris*, that is, the amount of just compensation due to respondents had not yet been settled by the time R.A. No. 6657 became effective. Following the aforementioned pronouncement in *Paris*, the fixing of just compensation should therefore be based on the parameters set out in R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 having only suppletory effect. Section 17 of R.A. No. 6657 states: SEC. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors, shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

3. ID.; ID.; ID.; ID.; ID.; ID.; FORMULA OUTLINED IN DAR ADMINISTRATIVE ORDER NO. 5, SERIES OF 1998, SHOULD BE APPLIED IN COMPUTING JUST COMPENSATION. — In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17, R.A. No. 6657 had already been translated into a basic formula by the Department of Agrarian Reform (DAR) pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held in *Celada* that the formula outlined in DAR A.O. No. 5, series of 1998 should be applied in computing just compensation.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE ON THE COURT; EXCEPTIONS. — The general rule is that factual findings of the trial court, especially when affirmed by the CA, are binding and conclusive on the Court. However, the rule admits of exceptions, as when the factual findings are grounded entirely on speculation, surmises, or conjectures or when the findings are conclusions without citation of specific evidence on which they are based.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Santos M. Baculi for respondents.

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] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 93207. The CA decision affirmed the decision of the Regional Trial Court (RTC) of Tuguegarao City, Branch 1 sitting as a Special Agrarian Court (SAC), which approved and ordered the payment of the amount of just compensation fixed by the Cagayan Provincial Agrarian Reform Adjudicator (PARAD) in favor of herein respondents.[4] The CA resolution denied petitioner's motion for reconsideration of the decision.[5]

The following factual antecedents are matters of record.

Petitioner Land Bank of the Philippines (LBP) is a government banking institution designated under Section 64 of Republic Act (R.A.) No. 6654 as the financial intermediary of the agrarian reform program of the government.

Respondent Heirs of Eleuterio Cruz are Anicia Cruz-Papa, Resurreccion Cruz-Pagcaliwagan, Antonio D. Cruz, Lourdes Cruz-Doma, Lorna Cruz-Felipe, Mamerto D. Cruz, Eduardo D. Cruz and Victoria Cruz-Dumlao. Eleuterio Cruz is the registered

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[1] *Rollo,* pp. 23-48.

[2] *Id.* at 49-61. Dated 17 August 2006 and penned by *J*. Lucas P. Bersamin and concurred in by *JJ*. Martin S. Villarama, Jr., chairman of the Eighth Division, and Celia C. Librea-Leagogo.

[3] *Id.* at 63. Dated 30 October 2006.

[4] *Id.* at 114-120.

[5] *Supra* note 3.

owner of an unirrigated riceland situated in Lakambini, Tuao, Cagayan per Transfer Certificate of Title No. T-368. Of the total 13.7320 hectares of respondents' landholding, an area of 13.5550 hectares was placed by the government under the coverage of the operation land transfer program under Presidential Decree (P.D.) No. 27.[6]

Petitioner pegged the value of the acquired landholding at ₱106,935.76 based on the guidelines set forth under P.D. No. 27[7] and Executive Order (E.O.) No. 228.[8] Respondents rejected petitioner's valuation and instituted an action for a summary proceeding for the preliminary determination of just compensation before the PARAD. On 23 November 1999, the PARAD rendered a decision fixing the just compensation in the amount of ₱80,000.00 per hectare.[9] Petitioner sought reconsideration but was unsuccessful.

Thus, on 28 January 2000, petitioner filed a petition for the determination of just compensation before the RTC of Tuguegarao City.[10] The petition was docketed as Agrarian Case No. 0058 and entitled *Land Bank of the Philippines v. Heirs of Eleuterio Cruz, represented by Lorna Cruz, et al.*[11]

Petitioner's evidence consisted of the testimonies of Benedicta Simon, head of the LBP Evaluation Division of Land Owner's Compensation Department, and Francisco de la Cruz, Chief,

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[6] *Id.* at 49-50.

[7] Entitled, "Decreeing The Emancipation Of Tenants From The Bondage Of The Soil, transferring To Them The Ownership Of The Land They Till And Providing The Instruments And Mechanism Therefor"; effective 21 October 1972.

[8] Entitled, "Declaring Full Land Ownership To Qualified Farmer Beneficiaries Covered By Presidential Decree No. 27; Declaring The Value Of Remaining Unvalued Rice And Corn Lands Subject To P.D. No. 27; And Providing For The Manager Of Payment By The Farmer Beneficiary And Mode Of Compensation By The Landowner"; Effective 17 July 1987.

[9] CA *rollo*, pp. 59-60.

[10] *Id.* at 61-64.

[11] *Rollo*, p. 114.

PARAD, Cagayan. Simon testified that as the officer charged with reviewing claims under the agrarian reform program, she computed the valuation of respondents' landholdings based on the formula set forth in P.D. No. 27, E.O. No. 228 and Administrative Order (A.O.) No. 13, series of 1994 and arrived at the value of ₱106,935.76. As the PARAD Chief tasked to oversee the implementation of the agrarian reform program, De la Cruz testified that the subject landholding was tenanted and covered by production agreements between the owner and various tenants. [12] Petitioner offered in evidence Exhibit "H" to prove that the subject landholding had an average production of 25 and 40 *cavans* per hectare annually.

For their part, respondents presented Lorna Cruz Felipe, who testified that as one of the heirs of Eleuterio Cruz, she knew that the subject landholding was planted with rice two or three times a year and had a production capacity of 80 to 100 cavans per hectare. Felipe also claimed that the current market value of the property was between ₱150,000.00 to ₱200,000.00 per hectare.[13]

On 07 December 2005, the RTC, sitting as an Special Agrarian Court (SAC), rendered a decision, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing ratiocination, judgment is hereby rendered fixing the amount of ₱80,000.00 to be the just compensation of the land subject of this case with an area of 13.7320 hectares situated at Lakambini, Tuao, Cagayan and covered under TCT No. T-368 and ordering Land Bank of the Philippines to pay respondent represented by Lorna Cruz-Felipe the amount of ₱1,098,560.00 in the manner provided by R.A. No. 6657 by way of full payment of the said just compensation.
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> SO DECIDED.[14]

The SAC held that the value of ₱80,000.00 per hectare fixed by the PARAD should be accorded weight and probative value

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[12] *Id.* at 115-116.

[13] *Id.* at 117.

[14] *Rollo*, p. 120.

and that the SAC is guided by the various factors enumerated in Section 17[15] of R.A. No. 6657 in determining just compensation. It disregarded respondents' claim that the valuation should be based on the current market value of the landholding since no evidence was adduced in support of the claim. The SAC also did not accept petitioner's valuation as it was based on P.D. No. 27, in which just compensation was determined at the time of the taking of the property.[16]

Petitioner filed a motion for reconsideration, which was denied in a Resolution dated 26 January 2006,[17] prompting petitioner to elevate the matter to the CA. In its petition for review,[18] petitioner questioned the total land area as well as the amount of just compensation adjudged by the SAC.[19]

On 17 August 2006, the CA rendered the assailed decision partly granting petitioner's appeal.[20] The appellate court ruled that the total area covered by the agrarian reform program as was duly established before the PARAD and expressly stated in the pre-trial order was only 13.5550 hectares and not 13.7320 hectares as was stated in the dispositive portion of the decision of the SAC.[21] However, the appellate court affirmed the SAC decision fixing just compensation at ₱80,000.00 per hectare.

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[15] Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm workers and by the government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

[16] *Id.* at 117-120.

[17] *Id.* at 121.

[18] *Id.* at 86-113.

[19] *Id.* at 96.

[20] *Supra* note 2.

[21] *Rollo*, p. 54.

Petitioner sought consideration but was denied in the assailed Resolution dated 30 October 2006.[22]

Hence, the instant petition, arguing that the formula set forth in P.D. No. 27/E.O. No. 228 should be applied in fixing just compensation since respondents' landholding was acquired under P.D. No. 27. Citing Section 2[23] of E.O. No. 228 and *LBP v. Hon. David C. Naval*,[24] petitioner posits that the correct formula in determining the just compensation should be Land Value = (2.5 x AGP x ₱35) x A, where AGP is the Average Gross Production per hectare; ₱35.00 is the Government Support Price for *palay* in 1972; and A is the total land area.

Petitioner insists that the values in E.O. No. 228 are applicable to lands acquired under P.D. No. 27 in cognizance of the well-settled rule that just compensation is the value of the property at the time of the taking on 21 October 1972, when the ownership of the subject property was transferred from the landowner to the farmers-beneficiaries and when the former was effectively deprived of dominion and possession over said land.

The petition lacks merit.

The Court laid down in *Paris v. Alfeche*[25] the applicability of P.D. No. 27 and E.O. No. 228 in relation to R.A. No. 6657

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[22] *Supra* note 3.

[23] Section 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

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

[25] 416 Phil. 473 (2001).

in the matter of the payment of just compensation. There the Court explained that while under P.D. No. 27 tenant farmers are already deemed owners of the land they till, they are still required to pay the cost of the land before the title is transferred to them and that pending the payment of just compensation, actual title to the tenanted land remains with the landowner.

In *Paris*, the application of the process of agrarian reform was still incomplete thus, the Court held therein that with the passage of R.A. No. 6657 before its completion, the process should now be completed under R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 applying only suppletorily.[26]

In *Land Bank of the Philippines v. Natividad*,[27] the Court explained why the guidelines under P.D. No. 27 and E.O. No. 228 are no longer applicable to the delayed payment of lands acquired under P.D. No. 27, to wit:

> It would certainly be inequitable to determine just compensation based on the guideline provided by PD No. 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[28]

The decisive backdrop of the instant case coincides with that in *Paris*, that is, the amount of just compensation due to respondents had not yet been settled by the time R.A. No. 6657 became effective. Following the aforementioned pronouncement in *Paris*, the fixing of just compensation should therefore be based on the parameters set out in R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 having only suppletory effect.

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[26] *Id.* at 488.

[27] G.R. No. 127198, 16 May 2005, 458 SCRA 441.

[28] *Id.* at 452.

Section 17 of R.A. No. 6657 states:

SEC. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors, shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Land Bank of the Philippines v. Celada*,[29] the Court ruled that the factors enumerated under Section 17, R.A. No. 6657 had already been translated into a basic formula by the Department of Agrarian Reform (DAR) pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held in *Celada* that the formula outlined in DAR A.O. No. 5, series of 1998[30] should be applied in computing just compensation.

Likewise, in *Land Bank of the Philippines v. Sps. Banal*,[31] the Court ruled that the applicable formula in fixing just compensation is DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, then the governing regulation applicable to compulsory acquisition of lands, in recognition of the DAR's rule-making power to carry out the object of R.A. No. 6657. Because the trial court therein based its valuation upon a different formula and did not conduct any hearing for the reception of evidence, the Court ordered a remand of the case to the SAC for trial on the merits.

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently

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[29] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

[30] Department of Agrarian Reform Administrative Order No. 5 (1998), entitled "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired to Republic Act"; effective 15 April 1998.

[31] 478 Phil. 701 (2004).

in *Land Bank of the Philippines v. Lim*,[32] where the Court also ordered the remand of the case to the SAC for the determination of just compensation strictly in accordance with DAR A.O. No. 6, series of 1992, as amended.

A perusal of the PARAD's Decision dated 23 November 1999, which mandated payment of just compensation in the amount of ₱80,000.00 per hectare, reveals that the PARAD did not adhere to the formula prescribed in any of the aforementioned regulations issued by the DAR or was at least silent on the applicability of the aforementioned DAR regulations to the question of just compensation. The PARAD decision also did not refer to any evidence in support of its finding.

The SAC, meanwhile, referred to DAR A.O. No. 6, series of 1992, as amended, as the controlling guideline in fixing just compensation. Pertinently, to obtain the land value, the formula[33] under said regulation requires that the values for the Capitalized Net Income, Comparable Sales and Market Value based on the tax declaration must be shown. Moreover, said formula has been superseded by DAR A.O. No. 05, series of 1998, which also requires values for Capitalized Net Income, Comparable Sales and Market Value, the same parameters laid down in the prior regulation.

Stating that no evidence was presented by respondents on the aforementioned parameters, the SAC ruled that it was constrained to adopt the finding of the PARAD, which fixed the value of the land at ₱80,000.00 per hectare. On appeal, the CA adopted the same finding.

The general rule is that factual findings of the trial court, especially when affirmed by the CA, are binding and conclusive on the Court. However, the rule admits of exceptions, as when the factual findings are grounded entirely on speculation, surmises,

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[32] G.R. No. 171941, 02 August 2007, 529 SCRA 129.

[33] LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1), where LV = Land Value; CNI = Capitalized Net Income; CS = Comparable Sales; and MV = Market Value per declaration.

or conjectures or when the findings are conclusions without citation of specific evidence on which they are based.[34]

A perusal of the PARAD decision, which was adopted by both the SAC and the CA, shows that its valuation of ₱80,000.00 per hectare is sorely lacking in any evidentiary or legal basis. While the Court wants to fix just compensation due to respondents if only to write *finis* to the controversy, the evidence on record is not sufficient for the Court to do so in accordance with DAR A.O. No. 5, series of 1998.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED* and the decision and resolution of the Court of Appeals in CA-G.R. SP No. 93207 are *REVERSED* and *SET ASIDE*. Agrarian Case No. 0058 is *REMANDED* to the Regional Trial Court, Branch 1, Tuguegarao City, Cagayan, which is directed to determine with dispatch the just compensation due respondents strictly in accordance with DAR A.O. No. 5, series of 1998.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177571. September 29, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEAN MARTIN *y* SARVIDA @ DENDEN and ROMEO TANOAN *y* MACAILIG,** *accused-appellants.*

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[34] 385 Phil. 720, 729 (2000).

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A GENERAL RULE, FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL IN THE ABSENCE OF ANY CLEAR SHOWING THAT THE TRIAL COURT OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH WOULD HAVE AFFECTED THE RESULT OF THE CASE; CASE AT BAR. — When an accused challenges the witness' identification of the perpetrators, the credibility of the witness is put to doubt. As a general rule, the findings of the trial court on the credibility of witnesses are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. In this case, accused-appellants have not given us sufficient reason to overturn the findings of the RTC and the CA. Accused-appellants' reliance on the alleged unfair conduct of the police line-up has no merit. The records do not bear out any irregularity in the way the police conducted the line-up. Besides, a police line-up is not required for the proper and fair identification of offenders. What is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.

2. ID.; ID.; ID.; DELAY IN MAKING A CRIMINAL ACCUSATION WILL NOT NECESSARILY IMPAIR THE CREDIBILITY OF A WITNESS IF SUCH DELAY IS SATISFACTORILY EXPLAINED; CASE AT BAR. — Also untenable is accused-appellants' contention that Sergio's testimony is doubtful considering his delay in reporting the identity of the assailants. Delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained. Sergio declared that at the time of the incident, he had passengers who did not want to be unloaded in that place, and afraid that he might also get involved in the matter, he simply overtook the victim's jeep when the traffic signal turned green. When the police came to the jeepney terminal to investigate two months after the incident, however, he readily

came forward to help identify the culprits. In a police line-up, he positively identified Tanoan as the person who stabbed the victim, and Martin as the one who hindered Dolores from seeking help. In his testimony in court, Sergio affirmed his earlier charge against accused-appellants and candidly pointed to the latter as the culprits.

3. ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF WITNESSES; WHEN TO PROSPER AS A DEFENSE. — Considered against the positive testimonies of the witnesses, accused-appellants' alibi cannot prevail. For the defense of alibi to prosper, the accused must demonstrate that he was so far away from the scene of the crime that it was physically impossible for him to be present there at the time of its commission.

4. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; ESTABLISHED IN CASE AT BAR. — We hold further that the CA correctly ruled that there was conspiracy between accused-appellants in committing the crime. Conspiracy exists when two or more persons agree to commit a felony and decide to commit it. Direct proof is not essential to prove conspiracy; it may be deduced by acts of the accused before, during, and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime. In this case, while Martin did not take part in stabbing the victim, his act of stopping Dolores from seeking help implied his assent to Tanoan's act and ensured the completion of the criminal act.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; GRANT THEREOF IN MURDER REQUIRES NO PROOF OTHER THAN THE FACT OF DEATH AS A RESULT OF THE CRIME AND PROOF OF THE ACCUSED'S RESPONSIBILITY THEREFOR. — The appellate court, however, deleted the award of civil indemnity. The grant of civil indemnity in murder requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor. Thus, civil indemnity of PhP 50,000 is additionally granted in favor of the heirs of the victim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated November 8, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02388 entitled *People of the Philippines v. Dean Martin and Romeo Tanoan* which affirmed the Decision[2] dated April 10, 2000 of the Regional Trial Court (RTC), Branch 11 in Manila in Criminal Case No. 95-14361. The RTC found accused-appellants Dean Martin and Romeo Tanoan guilty of murder and imposed upon them the penalty of *reclusion perpetua*.

The Facts

On April 2, 1995 at around 7:30 p.m., Rogelio Dihan, accompanied by his wife, Dolores, and their two children, was driving his passenger jeepney towards Dart, Paco, Manila. Rogelio stopped his jeepney at the red traffic light in San Andres Bukid, before crossing the railroad track near the South Super Highway. Suddenly, accused-appellant Tanoan approached Rogelio from behind and stabbed him several times. Dolores and her children, who were seated beside the victim, pleaded with Tanoan to stop but their cries were unheeded. Dolores then tried to get out of the jeepney to call for help but accused-appellant Martin and two other unidentified males blocked her way.

Thereafter, accused-appellants ran towards Perlita Street. Rogelio was able to drive the jeepney a little further before he

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[1] *Rollo*, pp. 3-21. Penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Remedios A. Salazar-Fernando and Arturo G. Tayag.

[2] CA *rollo*, pp. 24-31. Penned by Judge Luis J. Arranz.

collapsed. Dolores sought help from the passengers of the passing vehicles and an ambulance later brought Rogelio to the Philippine General Hospital. Rogelio was pronounced dead on arrival upon reaching the hospital.

Aside from Dolores, the incident was also witnessed by Sergio Delos Santos, Rogelio's co-driver along the San Andres-Faura-Paco route. At that time, Rogelio's jeep was right in front of Sergio's. While they were at a stop, Tanoan passed in front of Sergio's jeepney, and went beside Rogelio. Sergio then noticed a commotion inside the jeepney and he saw Tanoan stab Rogelio several times. Dolores tried to get out but Martin pushed her inside.[3]

On June 5, 1995, at around 9 o'clock in the morning, Dolores chanced upon Tanoan who was bathing in the rain near the railroad track where the crime occurred. Dolores then called her brother-in-law, who informed the police authorities of the presence of Tanoan. The police then came to the vicinity and apprehended Tanoan.

At the police station, Dolores, Sergio, and a certain Gerardo Oblibino identified Tanoan as the one who stabbed Rogelio. Later in the evening, Tanoan confessed to the investigating police that Martin was his co-conspirator. Martin was then apprehended. On the next day, Sergio identified Martin as the one who hindered Dolores from seeking help.[4]

Tanoan and Martin underwent inquest proceedings, and were later charged with the crime of murder.

In their defense, accused-appellants denied participation in the incident. Martin claimed that at the time of the incident, he was sewing basketball jerseys in their shanty, which was 50 meters away from where the crime took place. He said that he never left their shanty from 9 to 11 o'clock in the evening.[5] On the other hand, defense witnesses German Mariano, Irene

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[3] *Rollo,* p. 5.

[4] *Id.* at 6.

[5] *Id.* at 7.

Barrozo, and Giovanni Gafud stated that Tanoan was merely one of the bystanders who were milling around after the incident took place.

On April 10, 2000, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, this Court finds the accused DEAN MARTIN *y* SARVIDA @ Denden and ROMEO TANOAN *y* MACAILIG, guilty beyond [reasonable] doubt of the felony of murder as defined and penalized under Art. 248 of the Revised Penal Code as amended, without any aggravating and mitigating circumstance to affect their liability therefor, and sentences both of them to suffer the penalty of *reclusion perpetua*, and to pay jointly and severally, the heirs of the victim the amount of [PhP] 50,000.00 as civil indemnity, [PhP] 10,000.00 as actual expenses and the costs of suit.
>
> SO ORDERED.[6]

Accused-appellants 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. 143079. In accordance with *People v. Mateo*,[7] this Court, however, in its December 8, 2004 Resolution, transferred the case to the CA for intermediate review.

The Ruling of the CA

Affirming the trial court, the CA, in its Decision dated November 8, 2006, gave credence to the positive testimonies of the prosecution witnesses and dismissed the denial and alibi of accused-appellants. It held that the eyewitness account of the victim's wife is worthy of faith as she could only be interested in having the real culprit punished. Moreover, no ill motive was imputed against the prosecution witnesses that would taint their credibility. On the other hand, accused-appellants failed to show by convincing evidence that it was physically impossible for them to have been at the scene of the crime during its commission. The appellate court observed that even adducing from the defense

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[6] *Supra* note 2, at 31.

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

witnesses' testimonies, both accused-appellants were very near the scene of the crime at the time of its commission; which explained why they were identified as the perpetrators by the prosecution witnesses.

The CA then modified the trial court's award of damages. Considering that the actual damages proven only amounted to PhP 10,000, the CA awarded temperate damages in the amount of PhP 25,000 in lieu of actual damages. It also awarded PhP 25,000 as exemplary damages and PhP 50,000 as moral damages.

Hence, we have this appeal.

The Issues

In a Resolution dated August 22, 2007, this Court required the parties to submit supplemental briefs if they so desired. On October 3, 2007, accused-appellants, through counsel, signified that they were no longer filing a supplemental brief. Thus, the issues raised in accused-appellants' Brief dated April 3, 2001 are now deemed adopted in this present appeal:

I

The trial court erred in finding that accused Tanoan had been positively identified by the prosecution witnesses.

II

The trial court [erred] in holding that accused Martin had taken part in the assault on the victim. Moreover, he was not positively identified by any of the key witnesses present at the scene of the crime.

III

The trial court erred in believing the hearsay testimony of the police officers that upon being captured 2 months after the killing, accused Tanoan had declared that accused Martin was his companion in the assault.

IV

The trial court erred in finding accused Tanoan and Martin guilty beyond reasonable doubt of the crime of murder.[8]

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[8] CA *rollo*, pp. 64-65. Original in capital letters.

In essence, accused-appellants question the credibility of the prosecution witnesses in their identification of the former as the culprits.

This Court's Ruling

The appeal has no merit.

Accused-appellants contend that they were not properly identified by the prosecution witnesses as the perpetrators of the crime. They fault the investigating police officers for allegedly suggesting their identification to the eyewitnesses. Also, they question the witnesses' delay in reporting the identity of the assailants. Thus, they claim that the testimonies of the prosecution witnesses should not be given any weight.

When an accused challenges the witness' identification of the perpetrators, the credibility of the witness is put to doubt. As a general rule, the findings of the trial court on the credibility of witnesses are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[9]

In this case, accused-appellants have not given us sufficient reason to overturn the findings of the RTC and the CA. Accused-appellants' reliance on the alleged unfair conduct of the police line-up has no merit. The records do not bear out any irregularity in the way the police conducted the line-up. Besides, a police line-up is not required for the proper and fair identification of offenders.[10] What is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.[11]

Accused-appellant Tanoan was positively identified by two eyewitnesses: the victim's wife, Dolores, and the victim's co-

[9] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 568; *People v. Malejana*, G.R. No. 145002, January 24, 2006, 479 SCRA 610, 620; *People v. Cariño*, G.R. No. 131117, June 15, 2004, 432 SCRA 57, 71.

[10] *People v. Aquino*, G.R. No. 129288, March 30, 2000, 329 SCRA 247, 265.

[11] *People v. Dela Cruz*, G.R. No. 148730, June 26, 2003, 405 SCRA 112, 121.

driver, Sergio. In her testimony, Dolores recounted in a straightforward and clear manner how the stabbing incident took place. She described with certainty how the assailant looked like and pointed to Tanoan as that person. As correctly observed by the appellate court, Tanoan could not deny that Dolores saw him "because [he] was only a meter away from [her] and the street was illuminated by a light bulb in an electric post only [four] meters away from the jeepney."[12] Dolores remembered her husband's assailant so well that when she chanced upon him again within the vicinity of the crime scene, she immediately reported the matter to her brother-in-law, who contacted the police so that he could be arrested. Her identification of Tanoan as the culprit was established in a police line-up and confirmed consistently during her direct and cross examinations. It must be noted that relatives of a victim of a crime have a natural knack for remembering the face of the assailant and they, more than anybody else, would be concerned with obtaining justice for the victim.[13] Certainly, Dolores' interest for securing the conviction of her husband's assailant would dissuade her from implicating a person other than the real culprit.[14]

Also untenable is accused-appellants' contention that Sergio's testimony is doubtful considering his delay in reporting the identity of the assailants. Delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[15] Sergio declared that at the time of the incident, he had passengers who did not want to be unloaded in that place, and afraid that he might also get involved in the matter, he simply overtook the victim's jeep when the traffic

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[12] *Rollo,* p. 12.

[13] *Cariño, supra* at 81; *People v. Tagana,* G.R. No. 133027, March 4, 2004, 424 SCRA 620, 639; *People v. Coca, Jr.*, G.R. No. 133739, May 29, 2002, 382 SCRA 508, 515.

[14] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 667.

[15] *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106, 123.

signal turned green. When the police came to the jeepney terminal to investigate two months after the incident, however, he readily came forward to help identify the culprits. In a police line-up, he positively identified Tanoan as the person who stabbed the victim, and Martin as the one who hindered Dolores from seeking help. In his testimony in court, Sergio affirmed his earlier charge against accused-appellants and candidly pointed to the latter as the culprits.

Considered against the positive testimonies of the witnesses, accused-appellants' alibi cannot prevail. For the defense of alibi to prosper, the accused must demonstrate that he was so far away from the scene of the crime that it was physically impossible for him to be present there at the time of its commission.[16] Such was not established here. On the other hand, the prosecution was able to show that accused-appellants were only a few meters away from the crime scene and that it would not have been difficult for them to be there when the crime happened and surreptitiously return to where they were first situated after it had been committed.

We hold further that the CA correctly ruled that there was conspiracy between accused-appellants in committing the crime. Conspiracy exists when two or more persons agree to commit a felony and decide to commit it.[17] Direct proof is not essential to prove conspiracy; it may be deduced by acts of the accused before, during, and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.[18] In this case, while Martin did not take part in stabbing the victim, his act of stopping Dolores from seeking help implied his assent to Tanoan's act and ensured the completion of the criminal act.

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[16] *People v. Sumalinog, Jr.*, G.R. No. 128387, February 5, 2004, 422 SCRA 55, 64.

[17] *People v. Bulan*, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 579, 596; *People v. Abes*, G.R. No. 138937, January 20, 2004, 420 SCRA 259, 276.

[18] *Bulan, supra*.

As regards the award of damages, we find that the CA correctly awarded PhP25,000 as temperate damages in lieu of actual damages in a lesser amount.[19] Also, it was proper to award moral damages because such is granted without need of further proof other than the fact of the killing;[20] and exemplary damages because the crime was attended by an aggravating circumstance.[21] The appellate court, however, deleted the award of civil indemnity. The grant of civil indemnity in murder requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor.[22] Thus, civil indemnity of PhP 50,000 is additionally granted in favor of the heirs of the victim.

WHEREFORE, the Court *AFFIRMS* the November 8, 2006 CA Decision in CA-G.R. CR-H.C. No. 02388 with *MODIFICATIONS* to read as follows:

WHEREFORE, this Court finds the accused DEAN MARTIN *y* SARVIDA @ Denden and ROMEO TANOAN *y* MACAILIG, guilty beyond reasonable doubt of the crime of murder as defined and penalized under Art. 248 of the Revised Penal Code as amended, without any aggravating and mitigating circumstances to affect their liability, and sentences both of them to suffer the penalty of *reclusion perpetua*, and to pay jointly and severally, the heirs of the victim the amount of **PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 25,000 as temperate damages, PhP 25,000 as exemplary damages and the costs of suit**.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

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[19] *People v. Belonio*, G.R. No. 148695, May 27, 2004, 429 SCRA 579, 596.

[20] *People v. Geral*, G.R. No. 145731, June 26, 2003, 405 SCRA 104, 111; *People v. Cabote*, G.R. No. 136143, November 15, 2001, 369 SCRA 65, 78.

[21] CIVIL CODE, Art. 2230.

[22] *People v. Whisenhunt*, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

SECOND DIVISION

[G.R. No. 177874. September 29, 2008]

JAIME D. ANG, *petitioner, vs.* **COURT OF APPEALS and BRUNO SOLEDAD,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; WARRANTY, DEFINED. — A warranty is a statement or representation made by the seller of goods, contemporaneously and as part of the contract of sale, having reference to the character, quality or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them.

2. ID.; ID.; ID.; EXPRESS WARRANTY AND IMPLIED WARRANTY, DISTINGUISHED. — Warranties by the seller may be express or implied. Art. 1546 of the Civil Code defines *express* warranty as follows: "Art. 1546. **Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon**. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer." On the other hand, an *implied* warranty is that which the law derives by application or inference from the nature of the transaction or the relative situation or circumstances of the parties, irrespective of any intention of the seller to create it. Among the implied warranty provisions of the Civil Code are: as to the seller's title (Art. 1548), against hidden defects and encumbrances (Art. 1561), as to fitness or merchantability (Art. 1562), and against eviction (Art. 1548). The earlier cited ruling in *Engineering & Machinery Corp.* states that "the prescriptive period for instituting actions based on a breach of *express* warranty is that specified in the contract, and in the absence of such period, the general rule on rescission of contract, which is **four** years (Article 1389, Civil Code)."

As for actions based on breach of *implied* warranty, the prescriptive period is, under Art. 1571 (warranty against hidden defects of or encumbrances upon the thing sold) and Art. 1548 (warranty against eviction), six months from the date of delivery of the thing sold.

3. ID.; ID.; ID.; IMPLIED WARRANTY; WARRANTY AGAINST EVICTION, REQUISITES; NOT ESTABLISHED IN CASE AT BAR. — On the merits of his complaint for damages, even if Ang invokes breach of warranty against eviction as inferred from the second part of the earlier-quoted provision of the Deed of Absolute Sale, the following essential requisites for such breach, *vìz*: "A breach of this warranty requires the concurrence of the following circumstances: (1) The purchaser has been **deprived of the whole or part of the thing sold**; (2) This eviction is by a **final judgment**; (3) The **basis thereof is by virtue of a right prior to the sale made by the vendor**; and (4) The **vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee**. In the absence of these requisites, a breach of the warranty against eviction under Article 1547 cannot be declared," have not been met. For one, there is no judgment which deprived Ang of the vehicle. For another, there was no suit for eviction in which Soledad as seller was impleaded as co-defendant at the instance of the vendee.

4. ID.; ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; *SOLUTIO INDEBITI*; ABSENT IN CASE AT BAR. — [E]ven under the principle of *solutio indebiti* which the RTC applied, Ang cannot recover from Soledad the amount he paid BA Finance. For, as the appellate court observed, Ang settled the mortgage debt on his own volition under the supposition that he would resell the car. It turned out that he did pay BA Finance in order to avoid returning the payment made by the ultimate buyer Bugash. It need not be stressed that Soledad did not benefit from Ang's paying BA Finance, he not being the one who mortgaged the vehicle, hence, did not benefit from the proceeds thereof.

APPEARANCES OF COUNSEL

Marcos Law Firm and Associates for petitioner.
Fortunato D. Veloso and *Glenn R. Canete* for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Under a "car-swapping" scheme, respondent Bruno Soledad (Soledad) sold his Mitsubishi GSR sedan 1982 model to petitioner Jaime Ang (Ang) by Deed of Absolute Sale[1] dated July 28, 1992. For his part, Ang conveyed to Soledad his Mitsubishi Lancer model 1988, also by Deed of Absolute Sale[2] of even date. As Ang's car was of a later model, Soledad paid him an additional ₱55,000.00.

Ang, a buyer and seller of used vehicles, later offered the Mitsubishi GSR for sale through Far Eastern Motors, a second-hand auto display center. The vehicle was eventually sold to a certain Paul Bugash (Bugash) for ₱225,000.00, by Deed of Absolute Sale[3] dated August 14, 1992. Before the deed could be registered in Bugash's name, however, the vehicle was seized by virtue of a writ of replevin[4] dated January 26, 1993 issued by the Cebu City Regional Trial Court (RTC), Branch 21 in Civil Case No. CEB-13503, "*BA Finance Corporation vs. Ronaldo and Patricia Panes*," on account of the alleged failure of Ronaldo Panes, the owner of the vehicle prior to Soledad, to pay the mortgage debt[5] constituted thereon.

To secure the release of the vehicle, Ang paid BA Finance the amount of ₱62,038.47[6] on March 23, 1993. Soledad refused to reimburse the said amount, despite repeated demands, drawing Ang to charge him for Estafa with abuse of confidence before the Office of the City Prosecutor, Cebu City. By Resolution[7]

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[1] Exhibit "C", records, p. 86.

[2] Exhibit "2", *id.* at 136.

[3] Exhibit "D", *id.* at 87.

[4] Exhibit "J", *id.* at 94.

[5] See Chattel Mortgage, Exhibit "E", *id.* at 88.

[6] Exhibit "G", *id.* at 91.

[7] Exhibit "4", *id.* at 138-141.

of July 15, 1993, the City Prosecutor's Office dismissed the complaint for insufficiency of evidence, drawing Ang to file on November 9, 1993 the first[8] of three successive complaints for damages against Soledad before the RTC of Cebu City where it was docketed as Civil Case No. Ceb-14883.

Branch 19 of the Cebu City RTC, by Order[9] dated May 4, 1995, dismissed Civil Case No. Ceb-14883 for failure to submit the controversy to *barangay* conciliation.

Ang thereafter secured a certification to file action and again filed a complaint for damages,[10] docketed as Ceb-17871, with the RTC of Cebu City, Branch 14 which dismissed it, by Order[11] dated March 27, 1996, on the ground that the amount involved is not within its jurisdiction.

Ang thereupon filed on July 15, 1996 with the Municipal Trial Court in Cities (MTCC) a complaint,[12] docketed as R-36630, the subject of the instant petition.

After trial, the MTCC dismissed the complaint on the ground of prescription, *viz*:

> It appearing that the Deed of Sale to plaintiff o[f] subject vehicle was dated and executed on 28 July 1992, the complaint before the *Barangay* terminated 21 September 1995 per Certification to File Action attached to the Complaint, and this case eventually was filed with this Court on 15 July 1996, **this action has already been barred since more than six (6) months elapsed from the delivery of the subject vehicle to the plaintiff buyer to the filing of this action, pursuant to the aforequoted Article 1571.**"[13] (Emphasis and underscoring supplied)

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[8] Annex "A", CA *rollo*, pp. 38-41.

[9] Annex "C", *id.* at 49; penned by Judge Ramon G. Codilla, Jr.

[10] Annex "D", *id.* at 50-53.

[11] Annex "G", *id.* at 66-67; penned by Judge Renato C. Dacudao.

[12] Annex "H", *id.* at 68-72.

[13] Annex "J", *id.* at 87; penned by Judge Edgemelo C. Rosales.

His motion for reconsideration having been denied, Ang appealed to the RTC, Branch 7 of which affirmed the dismissal of the complaint, albeit it rendered judgment in favor of Ang "for the sake of justice and equity, and in consonance with the salutary principle of non-enrichment at another's expense." The RTC ratiocinated:

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[I]t was error for the Court to rely on Art. 1571 of the Civil Code to declare the action as having prescribed, since the action is not one for the enforcement of the warranty against hidden defects. Moreover, *Villostas vs. Court of Appeals* declared that the six-month prescriptive period for a redhibitory action applies only to implied warranties. **There is here an express warranty. If at all, what applies is Art. 1144 of the Civil Code, the general law on prescription, which states, *inter alia*, that actions 'upon a written contract' prescribes in ten (10) years** [*Engineering & Machinery Corporation vs. Court of Appeals*, G.R. No. 52267, January 24, 1996].

More appropriate to the discussion would be defendant's warranty against eviction, which he explicitly made in the Deed of Absolute Sale: I hereby covenant my absolute ownership to (*sic*) the above-described property and the same is free from all liens and encumbrances and I will defend the same from all claims or any claim whatsoever…"

Still the Court finds that plaintiff cannot recover under this warranty. There is no showing of compliance with the requisites.

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Nonetheless, for the sake of justice and equity, and in consonance with the salutary principle of non-enrichment at another's expense, defendant should reimburse plaintiff the ₱62,038.47 which on March 23, 1993 he paid BA Finance Corporation to release the mortgage on the car. (Emphasis and underscoring supplied)[14]

The RTC thus disposed as follows:

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[14] Annex "K", *id.* at 90-91; penned by Judge Simeon Dumdum, Jr.

Wherefore, judgment is rendered directing defendant to pay plaintiff ₱62,038.47, the amount the latter paid BA Finance Corporation to release the mortgage on the vehicle, with interest at the legal rate computed from March 23, 1993. Except for this, the judgment in the decision of the trial court, dated October 8, 2001 dismissing the claims of plaintiff is affirmed." (Underscoring supplied)[15]

Soledad's Motion for Reconsideration was denied by Order[16] of December 12, 2002, hence, he elevated the case to the Court of Appeals, Cebu City.

The appellate court, by the challenged Decision[17] of August 30, 2006, noting the sole issue to be resolved whether the RTC erred in directing Soledad to pay Ang the amount the latter paid to BA Finance plus legal interest, held that, following *Goodyear Phil., Inc. v. Anthony Sy*,[18] Ang "cannot anymore seek refuge under the Civil Code provisions granting award of damages for breach of warranty against *eviction* for the simple fact that three years and ten months have lapsed from the execution of the deed of sale in his favor prior to the filing of the instant complaint." It further held:

It bears to stress that the deed of absolute sale was executed on July 28, 1992, and the instant complaint dated May 15, 1996 was received by the MTCC on July 15, 1996.

While it is true that someone unjustly enriched himself at the expense of herein respondent, we agree with petitioner (Soledad) that it is not he.

The appellate court accordingly reversed the RTC decision and denied the petition.

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[15] *Id.* at 91-92.

[16] Annex "M", *id.* at 99-100.

[17] *Id.* at 169-177; penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Arsenio J. Magpale and Agustin S. Dizon.

[18] G.R. No. 154554, November 9, 2005, 474 SCRA 427.

By Resolution[19] of April 25, 2007, the appellate court denied Ang's motion for reconsideration, it further noting that when Ang settled the mortgage debt to BA Finance, he did so voluntarily in order to resell the vehicle, hence, Soledad did not benefit from it as he was unaware of the mortgage constituted on the vehicle by the previous owner.

The appellate court went on to hold that Soledad "has nothing to do with the transaction anymore; his obligation ended when he delivered the subject vehicle to the respondent upon the perfection of the contract of sale." And it reiterated its ruling that the action, being one arising from breach of *warranty*, had prescribed, it having been filed beyond the 6-month prescriptive period.

The appellate court brushed aside Ang's contention that Soledad was the proximate cause of the loss due to the latter's failure to thoroughly examine and verify the registration and ownership of the previous owner of the vehicle, given that Ang is engaged in the business of buying and selling second-hand vehicles and is therefore expected to be cautious in protecting his rights under the circumstances.

Hence, the present recourse — petition for review on *certiorari*, Ang maintaining that his cause of action had not yet prescribed when he filed the complaint and he should not be blamed for paying the mortgage debt.

To Ang, the ruling in *Goodyear v. Sy* is not applicable to this case, there being an *express* warranty in the herein subject Deed of Absolute Sale and, therefore, the action based thereon prescribes in ten (10) years following *Engineering & Machinery Corp. v. CA*[20] which held that where there is an express warranty in the contract, the prescriptive period is the one specified in the contract or, in the absence thereof, the general rule on rescission of contract.

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[19] Annex "C", CA *rollo*, pp. 206-209. Penned by Associate Justice Stephen C. Cruz and concurred in by Executive Justice Arsenio J. Magpale and Associate Justice Agustin S. Dizon.

[20] G.R. No. 52267, January 24, 1996, 252 SCRA 156.

Ang likewise maintains that he should not be blamed for paying BA Finance and should thus be entitled to reimbursement and damages for, following *Carrascoso, Jr. v. Court of Appeals*,[21] in case of breach of an *express* warranty, the seller is liable for damages provided that certain requisites are met which he insists are present in the case at bar.

The resolution of the sole issue of whether the complaint had prescribed hinges on a determination of what kind of warranty is provided in the Deed of Absolute Sale subject of the present case.

A warranty is a statement or representation made by the seller of goods, contemporaneously and as part of the contract of sale, having reference to the character, quality or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them.[22]

Warranties by the seller may be express or implied. Art. 1546 of the Civil Code defines *express* warranty as follows:

"Art. 1546. **Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon**. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer." (Emphasis and underscoring supplied)

On the other hand, an *implied* warranty is that which the law derives by application or inference from the nature of the transaction or the relative situation or circumstances of the parties, irrespective of any intention of the seller to create it.[23] Among the implied warranty provisions of the Civil Code are: as to the seller's title (Art. 1548), against hidden defects and encumbrances

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[21] G.R. Nos. 123672 & 164489, December 14, 2005, 477 SCRA 666.

[22] DE LEON, *COMMENTS AND CASES ON SALES* 299 (2000).

[23] *Id.* at 304.

(Art. 1561), as to fitness or merchantability (Art. 1562), and against eviction (Art. 1548).

The earlier cited ruling in *Engineering & Machinery Corp.* states that "the prescriptive period for instituting actions based on a breach of *express* warranty is that specified in the contract, and in the absence of such period, the general rule on rescission of contract, which is **four** years (Article 1389, Civil Code)."

As for actions based on breach of *implied* warranty, the prescriptive period is, under Art. 1571 (warranty against hidden defects of or encumbrances upon the thing sold) and Art. 1548 (warranty against eviction), six months from the date of delivery of the thing sold.

The following provision of the Deed of Absolute Sale reflecting the kind of warranty made by Soledad reads:

x x x x x x x x x

I hereby covenant my **absolute ownership to (sic) the above-described property and the same is free from all liens and encumbrances** and **I will defend the same from all claims or any claim whatsoever**; will save the vendee from any suit by the government of the Republic of the Philippines.

x x x x x x x x x

(Emphasis supplied)

In declaring that he owned and had clean title to the vehicle at the time the Deed of Absolute Sale was forged, Soledad gave an **implied** warranty of title. In pledging that he "will defend the same from all claims or any claim whatsoever [and] will save the vendee from any suit by the government of the Republic of the Philippines," Soledad gave a warranty **against eviction**.

Given Ang's business of buying and selling used vehicles, he could not have merely relied on Soledad's affirmation that the car was free from liens and encumbrances. He was expected to have thoroughly verified the car's registration and related documents.

Since what Soledad, as seller, gave was an implied warranty, the prescriptive period to file a breach thereof is six months after the delivery of the vehicle, following Art. 1571. But even if the date of filing of the action is reckoned from the date petitioner instituted his first complaint for damages on November 9, 1993, and not on July 15, 1996 when he filed the complaint subject of the present petition, the action just the same had prescribed, it having been filed 16 months after July 28, 1992, the date of delivery of the vehicle.

On the merits of his complaint for damages, even if Ang invokes breach of warranty against eviction as inferred from the second part of the earlier-quoted provision of the Deed of Absolute Sale, the following essential requisites for such breach, *viz*:

"A breach of this warranty requires the concurrence of the following circumstances:

(1) The purchaser has been **deprived of the whole or part of the thing sold**;

(2) This eviction is by a **final judgment**;

(3) The **basis thereof is by virtue of a right prior to the sale made by the vendor**; and

(4) The **vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee**.

In the absence of these requisites, a breach of the warranty against eviction under Article 1547 cannot be declared."[24] (Emphasis supplied),

have not been met. For one, there is no judgment which deprived Ang of the vehicle. For another, there was no suit for eviction in which Soledad as seller was impleaded as co-defendant at the instance of the vendee.

Finally, even under the principle of *solutio indebiti* which the RTC applied, Ang cannot recover from Soledad the amount

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[24] *Power Commercial and Industrial Corp. v. CA, et al.*, G.R. No. 119745, June 20, 1997, 274 SCRA 597, 600.

he paid BA Finance. For, as the appellate court observed, Ang settled the mortgage debt on his own volition under the supposition that he would resell the car. It turned out that he did pay BA Finance in order to avoid returning the payment made by the ultimate buyer Bugash. It need not be stressed that Soledad did not benefit from Ang's paying BA Finance, he not being the one who mortgaged the vehicle, hence, did not benefit from the proceeds thereof.

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178545. September 29, 2008]
(Formerly G.R. No. 135972)

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LEO BARRIGA (at large), REYNALDO BARRIGA *alias* "Baho-baho", PETER DOE, PAUL DOE and RICHARD DOE,** *appellants*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT COMMAND GREAT WEIGHT AND RESPECT UNLESS PATENT INCONSISTENCIES ARE IGNORED OR WHERE THE CONCLUSIONS REACHED ARE CLEARLY UNSUPPORTED BY EVIDENCE. — The Court affirms the appellant's conviction. There is no cogent reason to disturb the finding of guilt made by the RTC and

affirmed by the Court of Appeals. Jurisprudence is settled that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly unsupported by evidence. But these exceptions are unavailing in this case.

2. ID.; ID.; CREDIBILITY OF WITNESSES; INCONSISTENCIES AND DISCREPANCIES IN THE TESTIMONY REFERRING TO MINOR DETAILS, AND NOT ON THE BASIC ASPECTS OF THE CRIME, DO NOT IMPAIR THE WITNESS' CREDIBILITY, THESE INCONSISTENCIES EVEN TEND TO STRENGTHEN, RATHER THAN WEAKEN, THE CREDIBILITY OF WITNESSES AS THEY NEGATE ANY SUSPICION OF A REHEARSED TESTIMONY; CASE AT BAR. — A review of the records of this case shows that the RTC did not err in giving credence to the testimonies of the prosecution's witnesses. The testimony of Helen does not suffer from any serious and material contradictions that can detract her credibility. The Court finds Helen's testimony credible as it is replete with details and corroborated on material points by the other prosecution witnesses, who were equally credible. Helen, who saw the shooting of Eduardo, was very categorical and frank in her testimony. She identified Leo as the man who shot Eduardo, and appellant as the one who drove the get away vehicle of the four assailants. The Court has held that inconsistencies and discrepancies in the testimony referring to minor details, and not on the basic aspects of the crime, do not impair the witness' credibility. These inconsistencies even tend to strengthen, rather than weaken, the credibility of witnesses as they negate any suspicion of a rehearsed testimony.

3. ID.; ID.; ID.; ABSENT ANY REASON OR MOTIVE FOR A PROSECUTION WITNESS TO PERJURE, THE LOGICAL CONCLUSION IS THAT NO SUCH MOTIVE EXISTS AND HIS TESTIMONY IS THUS WORTHY OF FULL FAITH AND CREDIT; CASE AT BAR. — The defense also failed to impute any ill-motive on the prosecution's witnesses which would discredit their testimony on the events leading to Eduardo's killing. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such motive exists and his testimony is thus worthy of full faith and credit.

4. ID.; ID.; ID.; DELAY IN REVEALING THE NAMES OF THE MALEFACTORS DOES NOT, BY ITSELF, IMPAIR THE

CREDIBILITY OF THE PROSECUTION WITNESSES AND THEIR TESTIMONIES. — "[D]elay in revealing the names of the malefactors does not, by itself, impair the credibility of the prosecution witnesses and their testimonies." Time and again, this Court has ruled that "the nondisclosure by the witness to the police officers of [accused-appellant's] identity immediately after the occurrence of the crime is not entirely against human experience." It is already of judicial notice that family members of victims of violent crimes react to an unnatural occurrence in diverse ways.

5. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; ESTABLISHED IN CASE AT BAR. — The RTC, as affirmed by the Court of Appeals, correctly held that the existence of conspiracy between appellant and the four other assailants was established beyond reasonable doubt by the prosecution. Appellant took a direct part in the killing of Eduardo. His guilt is not merely based on circumstantial evidence. There is no question that he acted as the driver of the vehicle that took the four assailants to and from the crime scene. He even conducted reconnaissance on Eduardo prior to 23 March 1995. The RTC correctly dismissed appellant's claim that a gun was pointed at his back while he waited for the three other assailants as being incredible and uncorroborated. Such claim was a mere afterthought; he did not even report such threat to the police when he went there to report the incident.

6. ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION, NATURE; PRESENT IN CASE AT BAR. — The Court of Appeals correctly appreciated the testimonies of the prosecution's witnesses which showed the existence of evident premeditation in Eduardo's killing. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.

7. ID.; ID.; ID.; TREACHERY; NOT ESTABLISHED IN CASE AT BAR. — The Court of Appeals correctly held that the qualifying circumstance of treachery was not clearly established since none of the witnesses saw how the shooting was started. For treachery to be appreciated, it must be present and seen

by the witness right at the inception of the attack. Where no particulars are known as to how the killing began, its perpetration with treachery cannot merely be supposed.

8. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ABSENT IN CASE AT BAR; MERE SUPERIORITY IN NUMBER IS NOT ENOUGH TO CONSTITUTE SUPERIOR STRENGTH. — Abuse of superior strength cannot likewise be appreciated for it was not alleged in the information. Even if alleged, it cannot qualify the killing of Eduardo. In *People v. Flores*, this Court pointed out that this aggravating circumstance necessitates the showing of the relative disparity in physical characteristics, usually translating into the age, gender, the physical size and the strength of the aggressor and the victim. There is no proof that assailants utilized any notorious inequality to their advantage. In other words, mere superiority in number is not enough to constitute superior strength.

9. ID.; ID.; ID.; "WITH THE AID OF ARMED MEN"; QUALIFIES THE KILLING TO MURDER. — However, both the RTC and the Court of Appeals failed to appreciate the qualifying circumstance of the commission of the crime with the aid of armed men. The information alleged that the accused were "armed with short firearms." There is ample evidence on record establishing the presence of this circumstance. Under paragraph 1, Article 248 of the Revised Penal Code, "the aid of armed men" qualifies a killing to murder. Since treachery was not proven beyond reasonable doubt, the qualifying circumstance of killing "with the aid of armed men" could not be absorbed in treachery.

10. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ABSENT IN CASE AT BAR. — The RTC erred in considering voluntary surrender as a mitigating circumstance in favor of appellant. Appellant did not surrender to the police; he was arrested pursuant to a warrant of arrest as testified to by defense witness SPO2 Bustamante.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

The prosecution charged appellant Reynaldo Barriga and four others with murder for the killing of Eduardo Villabrille (Eduardo).[1] Only appellant was arrested and tried before the trial court[2] after pleading not guilty upon arraignment.[3]

The prosecution, on the other hand, presented Helen Casuya (Helen), Rogelio Sucuaji (Rogelio), Felixberta Villabrille (Felixberta) and Crisanta Magallano (Crisanta) as witnesses. Rogelio, Crisanta and Felixberta testified on the facts prior to and after the killing of Eduardo, which showed that appellant actively participated in planning the murder and in addition, they corroborated Helen's account of the incident. Felixberta also testified on the matter of damages. On the other hand, the defense introduced appellant himself, Natividad Barriga (Natividad), Efinito Wahing (Efinito) and SPO2 Henry Bustamante as witnesses.

The prosecution's evidence established the following facts:

On 10 March 1995, appellant and an old man went to see Helen, the common-law wife and fiancée of Eduardo, at her house, seemingly to inquire about a lot for sale owned by a certain Miss Rosal. After talking with Miss Rosal, appellant

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[1] CA *rollo*, p. 4. The information reads:

That on or about March 23,1995, in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Reynaldo Barriga, in conspiracy with Leo Barriga, Peter Doe, Paul Doe and Richard Doe, who are at large, with treachery and evident premeditation, with intent to kill and armed with short firearms, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Eduardo G. Villabrille, thereby inflicting upon him wounds which caused his death and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

[2] Record, p. 22.

[3] *Id.* at 29.

asked Helen for the location of Eduardo's house, to which she answered "the first house with color yellow."[4]

On 20 March 1995, Crisanta saw appellant going over the fence of her house and peeping through the jalousy window to spy on Eduardo, who was then watching television in her house.[5]

On 23 March 1995, at around five o'clock in the morning, riding on his bicycle, Eduardo proceeded to his mother's house to pasture his cows and water his newly planted mangoes. After a while, Helen heard four successive gunshots coming from the direction of the house of Eduardo's uncle, Cecilio Villabrille, which was about 40 meters away from her house.[6] She hurriedly went out and saw Eduardo being chased by three persons armed with short firearms.[7] Helen recognized one of the pursuers as Leo Barriga (Leo), the brother of appellant, for they used to play together in his house during their school days.[8] She saw Eduardo jump over a fence and fall on the ground. Then Leo approached Eduardo, poked a gun at his head, and fired.[9] She heard Leo tell his companions that Eduardo was already dead. Appellant picked up the three assailants in his motorcycle.[10]

Helen approached Eduardo, and saw that he was barely alive so she shouted for help. Eduardo's relatives came and brought him to the hospital. Eduardo died the next day.[11]

In the early morning of the same day, Crisanta saw three of the assailants near the Civilian Voluntary Organization (CVO) outpost looking at Eduardo's house some 200 meters away.[12]

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[4] TSN, 6 February 1996, pp. 23-24.

[5] TSN, 12 August 1996, pp. 18-19.

[6] TSN, 6 February 1996, pp. 16-17.

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

[8] TSN, 6 March 1996, p. 11.

[9] *Id.* at 12.

[10] TSN, 6 February 1996, pp. 22-23.

[11] *Id.* at 2-5.

[12] TSN, 12 August 1996, pp. 8-10.

The three persons then left the CVO outpost. Rogelio saw appellant driving the motorcycle which carried the other four assailants. They passed by his house which was only about 100 meters from the crime scene. He saw appellant drop three of his passengers in a place about 50 meters from his house, while one passenger stayed on in the motorcycle with appellant.[13]

Rogelio witnessed how Eduardo was gunned down by the three assailants, who were later picked up by appellant on the same motorcycle.[14] He approached Eduardo while Helen was cradling him, and he saw that Eduardo was then barely alive. Afterward, he went to the police station and reported the incident.[15]

After hearing the gunshots, Crisanta ran from her house to the house of Barangay Captain Roberto Lansaderas to report the incident. However, she did not proceed anymore for she saw him talking with appellant and the latter's companion.[16] She returned to her house, and sometime thereafter she saw appellant and his companion pass behind her house on a motorcycle going to the direction of the crime scene. Later, she saw the same motorcycle carrying appellant and his companion pass by her house again, this time carrying the three persons she saw earlier in the CVO outpost.[17] The three persons were carrying firearms, and she heard one of them shout *"finish, patay na, mobalik pa mi naa pa mi kohaon."*[18]

Felixberta, the mother of Eduardo, also saw the motorcycle pass by her house in the morning of 23 March 1995. She recognized appellant as the driver but she did not know his four passengers. When they passed by, they were staring at her house as if looking for something.

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[13] TSN, 19 March 1996, pp. 16-17.

[14] *Id.* at 18-20.

[15] *Id.* at 21-22.

[16] TSN, 12 August 1996, pp. 11-14.

[17] *Id.* at 15-17.

[18] *Id.* at 17. Translated as "He is dead; we will be come back, we will just get something."

Appellant, in his defense, denied his participation and that of his brother Leo in the killing of Eduardo. In the same breath, he claimed that he was only forced at gunpoint to drive the four assailants to and from the crime scene. He also belied the participation of Leo in the crime by setting up an alibi that the latter was in Barangay Mahayag, Alicia, Bohol on 23 March 1995. The other defense witnesses tried to corroborate his testimony.

According to appellant, he was waiting for passengers at the wharf of Babak, Panabo, Davao del Norte in the morning of 23 March 1995. Four persons hired him to take them to Peñaplata. They traveled for about 15 to 20 minutes, and then stopped near the house of ex-barangay captain Villabrille. Three of his passengers alighted and walked toward the direction of the houses in the vicinity. He was told to wait for them. Together with the fourth passenger who was left behind, they proceeded to the house of Barangay Captain Lansaderas' sister which is only around 200 meters from where he dropped the other three passengers. He bought a cigarette and had a conversation with Barangay Captain Lansaderas.[19] When they left, his lone passenger then poked a pistol to his back. Appellant saw people running but he did not hear any gunshot. He then saw the three persons running toward them. The three persons boarded appellant's motorcycle. The passengers told appellant to bring them anywhere so he brought them to Mata-mata, which is still within Babak. As they disembarked, they told him to report the incident to the municipal hall.[20] He then reported the shooting to Sgt. Panfilo Casas (Casas) of the Peñaplata Police Station. Casas informed appellant that his motorcycle had to be impounded since he used it in transporting the four other assailants.[21] Appellant's lawyer was able to secure the release of the motorcycle from the police the following day.[22]

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[19] TSN, 10 February 1997, pp. 4-6.

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

[21] *Id.* at 9.

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

Appellant denied that his brother Leo was one of the assailants in the killing of Eduardo.[23] And that the last time he saw his brother was in 1989.[24]

Appellant's mother, Natividad, testified that in the early morning of 23 March 1995 appellant brought her to Babak.[25] It was only on her return in the afternoon that she learned of the killing of Eduardo by assailants who were transported by appellant, and the impounding of appellant's motorcycle.[26] Natividad further testified that her son Leo was in Alicia, Bohol on 23 March 1995.[27]

The defense attempted to cast doubt on the credibility of Helen's testimony. They presented Efinito, the Barangay Captain of Mahayag, Alicia, Bohol, to corroborate their testimony that Leo was in Alicia, Bohol on 23 March 1995. Efinito testified that he talked with Leo on 23 March 1995 and assigned him to decorate the stage for a religious rite to be held in the afternoon of 24 March 1995.[28] He testified that in the morning of 24 March 1995 Leo was attending a recognition rite in their municipality's high school. Efinito even presented a picture showing Leo pin a ribbon on his wife's nephew, a certain Miguel "Joel" Galope, Jr.[29]

SPO2 Bustamante testified that he learned about the killing of Eduardo through the police blotter when he reported to work at around eight o'clock in the morning of 23 March 1995.[30] The entry in the police blotter was made and signed by appellant when he reported the shooting.[31]

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[23] *Id.* at 13-14.

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

[25] TSN, 17 March 1997, p. 3.

[26] *Id.* at 4-6.

[27] TSN, 16 July 1997, pp. 12-13.

[28] TSN, 25 June 1997, pp. 7, 10.

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

[30] TSN, 19 August 1997, pp. 5-6.

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

The Regional Trial Court (RTC) found appellant guilty of the crime of murder[32] and sentenced him to *reclusion perpetua* in a decision dated 13 February 1998.[33] The RTC held that two eyewitnesses pointed to appellant as a co-conspirator who guided the other four accused to the scene of the crime. Appellant went back to the crime scene after the shooting of Eduardo to pick up his three companions and brought them to a safe place. It further found credence in the prosecution's evidence that showed appellant spying or monitoring Eduardo even prior to 23 March 1995. His report of the incident to the police was merely a cover-up to draw suspicion away from him in the

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[32] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

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

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. **With evident premeditation**.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied)

[33] CA *rollo*, pp. 38-39. Branch 34, Panabo, Davao. The dispositive portion of the decision penned by Judge Gregorio Palabrica reads:

WHEREFORE, the Court finds, REYNALDO BARRIGA guilty with having committed the crime of MURDER, beyond reasonable doubt and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*.

He is further ordered to pay the heirs of EDUARDO VILLABRILLE the sum of THIRTEEN THOUSAND SEVEN HUNDRED (₱13,700.00) PESOS as damages, plus FIFTY THOUSAND (₱50,000.00) PESOS as indemnity of [*sic*] the victim's death.

SO ORDERED.

elaborate plan to kill Eduardo. Moreover, the defense had not ascribed ill motives on Helen's positive identification of appellant and his brother Leo in the killing of Eduardo. The RTC did not give credence to appellant's claim that a gun was pointed at his back while he waited for the three other assailants. It found such claim incredible, uncorroborated, and a mere afterthought for appellant did not even report such threat to the police when he went there to report the incident. The RTC found that the killing was qualified by abuse of superior strength and treachery since Eduardo was shot when he fell down. Despite being a ruse, the RTC gave appellant the benefit of the mitigating circumstance of voluntary surrender to the police and sentenced him to *reclusion perpetua* and not the maximum penalty of death.[34]

The RTC denied appellant's motion for reconsideration in an order dated 25 May 1998.[35] Appellant filed a notice of appeal to this Court.[36] On 30 August 2004, the Court issued a Resolution[37] transferring the case to the Court of Appeals for intermediate review.[38]

The Court of Appeals[39] affirmed the decision of the RTC. The appellate court gave credence to the testimony of Helen when she explained that she did not immediately report the incident and identify Leo as one of the assailants because she was still in shock. Further, it found that the alleged inconsistencies

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[34] *Id.* at 36-38.

[35] Records, pp. 133-135.

[36] *Id.* at 136.

[37] Pursuant to the case of *People v. Efren Mateo*, G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656.

[38] CA *rollo*, pp. 220-221.

[39] *Id.* at 244. Penned by Associate Justice Sixto Marella, Jr. and concurred in by Associate Justices Edgardo Camello and Mario Lopez. The dispositive portion reads:

WHEREFORE, the Decision appealed from is affirmed *in toto*.

SO ORDERED.

in Helen's testimony are minor and inconsequential. It noted that the conviction of appellant did not rest on Helen's testimony alone. There was substantial corroboration on material points by prosecution witnesses Rogelio, Crisanta, and Felixberta. No ill motive was ascribed to the prosecution witnesses who testified as to the participation of appellant and his brother Leo to the murder of Eduardo.[40]

The appellate court, however, held that the qualifying circumstance of treachery was not clearly established as no witness was presented to show how the shooting was done. But it found that evident premeditation attended the killing of Eduardo, as shown by the following circumstances: (1) the appellant's act of assessing, that is, asking where the house of the deceased is located and in surreptitiously peeping through the deceased's house days before the incident; (2) the fact that the incident happened at 5:30 a.m. of 23 March 1995; (3) the assailants arrived at the scene of the crime together, fully armed and immediately proceeded to attack the deceased; and (4) the assailants left the scene of the crime at the same time.[41]

The case is again before us for our final disposition. Appellant had assigned three (3) errors in his appeal initially passed upon by the Court of Appeals, to wit: whether the RTC erred in declaring him as a co-conspirator of his brother Leo; whether the RTC erred in finding him guilty of murder just because he drove the vehicle carrying the other assailants, and; assuming *arguendo* that he is guilty, he is only guilty of homicide.[42]

The Court affirms the appellant's conviction. There is no cogent reason to disturb the finding of guilt made by the RTC and affirmed by the Court of Appeals.

Jurisprudence is settled that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly

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[40] CA *rollo*, pp. 239-240.

[41] *Id.* at 242-243.

[42] *Id.* at p. 102.

unsupported by evidence.[43] But these exceptions are unavailing in this case.

As support for the first and second issues, appellant attempted to impeach the credibility of Helen's testimony by pointing to alleged inconsistencies.[44] Moreover, appellant tried to put in issue the fact that it took Helen two weeks or until 6 April 1995, after Eduardo's burial, to report the incident and pinpoint Leo as one of the assailants.[45]

It is a well-settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[46] We see no reason to deviate from this rule.

A review of the records of this case shows that the RTC did not err in giving credence to the testimonies of the prosecution's witnesses. The testimony of Helen does not suffer from any serious and material contradictions that can detract her credibility. The Court finds Helen's testimony credible as it is replete with details and corroborated on material points by the other prosecution witnesses, who were equally credible. Helen, who saw the shooting of Eduardo, was very categorical and frank in her testimony. She identified Leo as the man who shot Eduardo, and appellant as the one who drove the get away vehicle of the four assailants. The Court has held that inconsistencies and discrepancies in the testimony referring to minor details, and not on the basic aspects of the crime, do not impair the witness'

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[43] *People v. Quinevista, Jr.*, 314 Phil. 540, 547 (1995), citing *People v. Gumahin*, No. L-22357, 31 October 1967, 21 SCRA 729.

[44] CA *rollo*, pp. 118-119.

[45] *Id.* at 114-118.

[46] *People v. Baccay*, 348 Phil. 322, 330 (1998). See also *People v. Bolivar, et al.*, 405 Phil. 55, 70 (2001), citing *People v. Rosario*, G.R. No. 122769, 3 August 2000, 337 SCRA 169; *People v. Baltazar*, 405 Phil. 340 (2001); and *People v. Mayor Sanchez*, 419 Phil. 808 (2001).

credibility.[47] These inconsistencies even tend to strengthen, rather than weaken, the credibility of witnesses as they negate any suspicion of a rehearsed testimony.[48]

The defense also failed to impute any ill-motive on the prosecution's witnesses which would discredit their testimony on the events leading to Eduardo's killing. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such motive exists and his testimony is thus worthy of full faith and credit.[49]

The RTC and the Court of Appeals correctly gave credence to Helen's explanation on the two-week delay in reporting the identity of the assailants in the killing of Eduardo. It is understandable that she was still reeling from extreme shock and grief due to the unexpected and gruesome death of Eduardo. In *People v. Lapay*,[50] we held that "delay in revealing the names of the malefactors does not, by itself, impair the credibility of the prosecution witnesses and their testimonies." Time and again, this Court has ruled that "the nondisclosure by the witness to the police officers of [accused-appellant's] identity immediately after the occurrence of the crime is not entirely against human experience."[51] It is already of judicial notice that family members

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[47] *People v. Salamat*, G.R. No. 103295, 20 August 1993, 225 SCRA 499, 507, citing *People v. Dulay*, G.R. No. 92600, 18 January 1993.

[48] *People v. Utinas*, G.R. No. 105832, 22 December 1994, 239 SCRA 362, 370, citing *People v. Bautista*, G.R. No. 102618, 12 October 1993, 227 SCRA 182; *People v. Custodio*, G.R. No. 96230, 27 May 1991, 197 SCRA 538.

[49] *People v. Mendoza*, 388 Phil. 279, 288 (2000), citing *People v. Acaya*, G.R. No. 108381, 7 March 2000, citing *People v. Rada*, G.R. No. 128181, 10 June 1999, p. 15 and *People v. Aguinas*, G.R. No. 121993, 12 September 1997, 279 SCRA 52, 65. See also *People v. Benito*, 363 Phil. 90, 98 (1999).

[50] 358 Phil. 541, 558 (1998), citing *People v. Rosario*, 246 SCRA 658, 667, July 18, 1995; *People v. Ompad, Jr.*, 233 SCRA 62, 66, June 10, 1994; and *People v. Rosario*, 134 SCRA 497, 509, February 25, 1985.

[51] *People v. Malimit*, 332 Phil. 190, 199 (1996), citing *People v. Pacabes*, 137 SCRA 158 (1985); See also *People v. Danico*, 208 SCRA 472 (1992), and *People v. Caraig*, 202 SCRA 357 (1991).

of victims of violent crimes react to an unnatural occurrence in diverse ways. Some, if they have any information about the incident, would waste no time in telling the police everything they know. Others would rather choose, or are forced, to clam up and refuse to divulge any information they may possess. And then, there are the majority of family members who would first hesitate before they reveal what they know.[52]

The RTC, as affirmed by the Court of Appeals, correctly held that the existence of conspiracy between appellant and the four other assailants was established beyond reasonable doubt by the prosecution.[53] Appellant took a direct part in the killing of Eduardo. His guilt is not merely based on circumstantial evidence. There is no question that he acted as the driver of the vehicle that took the four assailants to and from the crime scene. He even conducted reconnaissance on Eduardo prior to 23 March 1995. The RTC correctly dismissed appellant's claim that a gun was pointed at his back while he waited for the three other assailants as being incredible and uncorroborated. Such claim was a mere afterthought; he did not even report such threat to the police when he went there to report the incident.

All told, the Court finds no reason to reverse the ruling of the RTC and the Court of Appeals insofar as the crime was committed by the accused. What remains to be determined is the propriety of the penalty imposed on appellant in relation to the third issue raised.

The Court of Appeals correctly appreciated the testimonies of the prosecution's witnesses which showed the existence of evident premeditation in Eduardo's killing.[54] The essence of

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[52] *People v. Cortezano*, 425 Phil. 696, 713 (2002).

[53] CA *rollo*, p. 38. See *Fernandez v. People*, 395 Phil. 478, 502 (2000), citing *People v. Gomez*, 270 SCRA 432, 443 (1997); *People v. Viernes*, 262 SCRA 655, 657 (1996). See also *People v. Medina*, 354 Phil. 447, 458 (1998); *People v. Ponce*, 395 Phil. 563, 572 (2000), citing *Pecho v. People*, 262 SCRA 518, 531 (1996), citing *People v. De Roxas*, 241 SCRA 369 (1995); *People v. Tami*, 244 SCRA 1, 22 (1995) citing *People v. De Roxas*, 241 SCRA 369 (1995), *People v. Peralta*, 25 SCRA 759 (1968).

[54] CA *rollo*, pp. 242-243. See Note 41.

evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.[55]

The Court of Appeals correctly held that the qualifying circumstance of treachery was not clearly established since none of the witnesses saw how the shooting was started. For treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[56] Where no particulars are known as to how the killing began, its perpetration with treachery cannot merely be supposed.[57]

Abuse of superior strength cannot likewise be appreciated for it was not alleged in the information.[58] Even if alleged, it cannot qualify the killing of Eduardo. In *People v. Flores*,[59] this Court pointed out that this aggravating circumstance necessitates the showing of the relative disparity in physical characteristics, usually translating into the age, gender, the physical size and the strength of the aggressor and the victim. There is no proof that assailants utilized any notorious inequality to their

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[55] *People v. Uganap, et al.*, 411 Phil. 320, 335 (2001); citing *People v. Bibat*, 290 SCRA 27 (1998). See also *People v. Reyes*, 350 Phil. 683, 696, 697 (1998); *People v. Galvez*, 407 Phil. 541, 560 (2001), citing *People v. Orculla*, G.R. No. 132350, 5 July 2000, 335 SCRA 129. See also *People v. Torres, Jr.* 400 Phil. 1332, 1347 (2000); *People v. Sgt. Magno*, 379 Phil. 537, 555 (2000); *People v. Tan*, 373 Phil. 190 (1999); *People v. Silvestre*, 366 Phil. 527 (1999); *People v. Gatchalian*, 360 Phil. 178 (1998); *People v. Villamor*, 354 Phil. 396 (1998); *People v. Timblor*, 348 Phil. 847 (1998).

[56] *People v. Leal*, 411 Phil. 465, 479 (2001), citing *People v. Sambulan*, G.R. No. 112972, 24 April 1998, 289 SCRA 500, 515; *People v. Amanmangpang*, 291 SCRA 638, 653, July 2, 1998; *People v. Bautista*, 312 SCRA 214, 235, August 11, 1999; *People v. Sioc*, Jr., 319 SCRA 12, 22, November 24, 1999; *People v. Maldo*, 307 SCRA 424, 440-441, May 19, 1999. See also *People v. Bahenting*, 363 Phil. 181, 191 (1999). See also *People v. Mantung*, 369 Phil. 1085, 1101 (1999); *People v. Borreros*, 366 Phil. 360, 373-374 (1999).

[57] *People v. Leal*, *supra*, citing *People v. Borreros*, 306 SCRA 680, 693, May 5, 1999; *People v. Silvestre*, 307 SCRA 68; 89-90, May 12, 1999.

[58] RULES OF COURT, Rule 110, Section 8.

[59] 408 Phil. 447, 463-464 (2001).

advantage. In other words, mere superiority in number is not enough to constitute superior strength.[60]

However, both the RTC and the Court of Appeals failed to appreciate the qualifying circumstance of the commission of the crime with the aid of armed men. The information alleged that the accused were "armed with short firearms." There is ample evidence on record establishing the presence of this circumstance. Under paragraph 1, Article 248 of the Revised Penal Code, "the aid of armed men" qualifies a killing to murder. Since treachery was not proven beyond reasonable doubt, the qualifying circumstance of killing "with the aid of armed men" could not be absorbed in treachery.[61]

The RTC erred in considering voluntary surrender as a mitigating circumstance[62] in favor of appellant. Appellant did not surrender to the police; he was arrested pursuant to a warrant of arrest as testified to by defense witness SPO2 Bustamante.[63]

The rule is that when more than one qualifying circumstances is proven, the others must be considered as generic aggravating.[64]

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[60] *People v. Galapin*, 355 Phil. 212, 231 (1998), citing *People v. Castor*, 216 SCRA 410, 421 (1992). See also *People v. Nicholas*, 422 Phil. 53, 69-70 (2001). See also *People v. Samudio, et al.*, 406 Phil. 318, citing *People v. Buluran*, G.R. No. 113940, 15 February 2000, 325 SCRA 476, 487-488, citing *People v. Plantilla*, 304 SCRA 339 (1999).

[61] *People v. Torrefiel*, 326 Phil. 388, 399-400 (1996); *People v. Amondina*, G.R. No. 75295, 17 March 1993, 220 SCRA 6, 11; *People v. Mori*, Nos. L-23511-12, 31 January 1974, 55 SCRA 382, 403. See also *People v. Sespeñe, et al.*, 102 Phil. 199 (1957); *United States v. Domingo and Dolor*, 18 Phil. 250 (1911).

[62] Article 13(7), Revised Penal Code. See *People v. Lee*, G.R. No. 66848, 20 December 1991, 204 SCRA 900, 911, citing *People v. Lingatong*, 181 SCRA 424; *People v. Ablao*, 183 SCRA 658. See also *People v. Tismo*, G.R. No. 44773, 4 December 1991, 204 SCRA 535, 558-559; *People v. Devaras*, G.R. No. 48009, 3 February 1992, 205 SCRA 676, 694; *People v. Gomez*, G.R. No. 10914, 17 August 1994, 235 SCRA 444.

[63] TSN, 19 August 1997, pp. 11-14.

[64] *People v. Reynes*, 423 Phil. 363, 384 (2001), citing *People v. Danico*, 208 SCRA 472 (1992).

The qualifying circumstance of "with the aid of armed men" serves in this case as a generic aggravating circumstance, meriting the imposition of the penalty of death in the absence of any mitigating circumstance.[65] However, pursuant to Republic Act No. 9346[66] which prohibits the imposition of the death penalty, the Court can only impose *reclusion perpetua*, which will be in lieu of the death penalty.

As to damages, the Court finds that the civil indemnity should be increased to ₱75,000.00.[67] The award of civil indemnity may be granted without any need of proof other than the death of the victim.[68]

The award of ₱13,700.00 actual damages for funeral and medical expenses was properly supported by receipts and

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[65] ART. 63. *Rules for the application of indivisible penalties*. — x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x x x x x x

[66] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

[67] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742-743; *People v. Bangcado*, 399 Phil. 768, 792 (2000). See also *People v. Amion*, 405 Phil. 917, 934 (2001), *People v. Court of Appeals*, 405 Phil. 247, 269 (2001), citing *People v. Ariel Pedroso y Ciabo*, G.R. No. 125120, July 19, 2000; *People v. Go-od*, 387 Phil. 628 (2000); *People v. Rosalino Flores*, 385 Phil. 159 (2000); *People v. Mindanao*, 390 Phil. 510 (2000); *People v. Quijon*, 382 Phil. 339 (2000); *People v. Buluran*, 382 Phil. 364 (2000).

[68] *People v. Concepcion*, 409 Phil. 173, 189 (2001); citing *People v. De Vera*, 312 SCRA 640 (1999).

documents evidencing the same, which were presented before the RTC, as required by Article 2199 of the Civil Code.[69]

However, in accordance with jurisprudence, the Court has to award temperate damages in the amount of ₱25,000.00 in lieu of the actual damages of a lesser amount.[70] As explained in *People v. Werba*,[71] to rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000.00 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to ₱25,000.00 temperate damages.

Though not awarded by the RTC, the victim's heirs are entitled to moral damages amounting to ₱50,000.00, pursuant to existing jurisprudence.[72] An award of moral damages is fair and just even though the prosecution did not present any proof, apart from the fact of death of the victim and the culpability of the accused. On the other hand, the Court has no basis to award damages for the loss of earning capacity of Eduardo because the prosecution failed to introduce any evidence on this matter.

In addition, exemplary damages in the amount of ₱25,000.00 should be awarded considering the attendance of the aggravating circumstance of evident premeditation that qualified the killing to murder, and the qualifying circumstance of "with the aid of armed men" that serves as generic aggravating circumstance.[73]

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[69] ART. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[70] *People v. Werba*, G.R. No. 144599, June 9, 2004, 431 SCRA 482; citing *People v. Villanueva*, G.R. No. 139177, August 11, 2003, 408 SCRA 571.

[71] *Id.* at 499.

[72] *People v. Cortez*, 401 Phil. 886, 905 (2000). See also *People v. Ortiz*, 413 Phil. 592, 617 (2001); *People v. Dela Cruz*, 402 Phil. 138, 151 (2001).

[73] *People v. PO3 Roxas*, 457 Phil. 566, 579 (2003), citing *People v. Catubig*, G.R. No. 137842, 23 August 2001. See also *People v. Bergante*, 350 Phil. 275, 292-293 (1998); *People v. Reyes*, 350 Phil. 683, 699 (1998).

WHEREFORE, the decision of the Regional Trial Court in Criminal Case No. 95-81 finding appellant guilty beyond reasonable doubt of the crime of murder and sentencing him and sentencing him to *reclusion perpetua* is *AFFIRMED with the MODIFICATIONS* that the civil indemnity be increased to ₱75,000.00 and that appellant shall pay the heirs of Eduardo Villabrille moral damages of ₱50,000.00, temperate damages of ₱25,000.00 and exemplary damages of ₱25,000.00. Costs against appellant.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179939. September 29, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERALDINE MAGAT *y* PADERON,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In all prosecutions for violation of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crimes.

2. ID.; ID.; ID.; ID.; IDENTITY OF THE *CORPUS DELICTI* NOT SUFFICIENTLY ESTABLISHED WHEN THE REQUIRED

PROCEDURE UNDER THE LAW IS NOT COMPLIED WITH. — In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court. R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the *corpus delicti*. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE DISTINGUISHED FROM WEIGHT OF EVIDENCE; CASE AT BAR. — While the seized drugs may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight if the procedure in Section 21 of R.A. No. 9165 was not complied with. The Court stressed that the admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the *corpus delicti*. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. The presumption of regularity in the performance of official duty relied upon by the courts *a quo* cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt. Although the evidence for the defense is weak, the prosecution must rely on the weight of its own evidence and cannot draw strength from the weakness of the defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Two separate informations[1] for violations of Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, were filed against appellant Geraldine Magat *y* Paderon. She pleaded not guilty to both charges at the arraignment.[2]

The prosecution presented PO1 Philip Santos (PO1 Santos) who was assigned at the Drug Enforcement Unit of the Meycauayan Police Station and had acted as the poseur-buyer in the buy-bust operation. The testimony of forensic chemist P/Insp. Nellson Cruz Sta. Maria was dispensed with in view of the defense's admission that if the chemist were placed on the witness stand he could identify the Request for Laboratory Examination[3] and Chemistry Report No. D-403-2003,[4] with the qualification that the chemist had no personal knowledge of the

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[1] Record, pp. 2, 5. **Criminal Case No. 2158-M-2003** reads:

That on or about the 9th day of [June 2003], in the municipality of Meycauayan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of *[M]ethylamphetamine [H]ydrochloride* weighing 0.096 gram.

Contrary to law.

Criminal Case No. 2159-M-2003 reads:

That on or about the 9th day of [June 2003], in the municipality of Meycauayan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of [M]ethylamphetamine [H]ydrochloride weighing 0.079 gram.

Contrary to law.

[2] *Id.* at 18-20.

[3] *Id.* at 9.

[4] *Id.* at 10. The pertinent portion reads:

facts surrounding the arrest of appellant and the source of the specimen examined.[5] The testimonies of PO1 Manuel Mendoza (Mendoza) and Michael Sarangaya (Sarangaya), who were PO1 Santos's backup during the entrapment operation, were likewise dispensed with as the defense admitted that it would merely corroborate the testimony of PO1 Santos.[6]

According to the evidence for the prosecution, the facts are as follows:

On 7 and 8 of June 2003 and in the morning of 9 June 2003, a buy-bust team composed of policemen conducted surveillance operations on appellant on account of a validated report from a concerned citizen that she was engaged in selling illegal drugs.[7]

With PO1 Santos to act as the poseur-buyer and two ₱100.00 bills as buy-bust money, in the afternoon of 9 June 2003 at about 4:20 p.m. the policemen proceeded to the target place and reached appellant's premises 30 minutes later. They saw appellant standing in front of her house. PO1 Santos asked

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SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A ("A PCS") = 0.096 gram
B ("B PCS") = 0.079 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drug. xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for the presence of *Methylamphetamine hydrochloride*, a dangerous drug. x x x

CONCLUSION:

Specimens A and B contain *Methylamphetamine hydrochloride*, a dangerous drug. x x x

TIME & DATE COMPLETED: 1610H 10 June 2003

[5] *Id.* at 82-83.

[6] *Id.* at 55-56.

[7] *Id.* at 146-148.

appellant "*Ate, meron bang dalawang piso*?" After looking at him, appellant said "Okay!" and then went inside her house. When appellant came back, she asked for money from him and so PO1 Santos handed her the two marked ₱100.00 bills. In turn, appellant gave the plastic sachet of *shabu* to him. Thereafter, PO1 Santos executed the pre-arranged signal by scratching his head, prompting his companions to approach them. PO1 Santos, introducing himself as a policeman, arrested appellant. He informed appellant that she was being arrested for violation of R.A. No. 9165. The policemen requested appellant to empty her pockets. Appellant complied; her right pocket yielded another sachet of *shabu*. They got back the two marked ₱100.00 bills from appellant's left hand.[8]

They brought appellant to the police station where they booked her. PO1 Santos marked the plastic sachets containing *shabu* with his initials "PCS" and the letters "A" and "B" for examination. The plastic sachets were examined at the PNP Crime Laboratory Office; the examination yielded positive for *methamphetamine hydrochloride*.[9] PO1 Santos admitted during cross-examination that although it was confirmed that appellant was selling illegal drugs he did not secure a search warrant since their chief's instruction to them was to conduct a buy-bust operation.[10] He also admitted that he did not coordinate the buy-bust operation with the *barangay* officials and did not verify whether appellant was a drug peddler.[11]

Appellant denied the charges against her and testified that between 4:00 to 5:00 p.m. on 9 June 2003, while she was taking a bath, policemen PO1 Santos, Sarangaya, and Mendoza barged into her house. Hearing the noise, she came out of the comfort room and proceeded upstairs where she saw the policemen already searching the place. After the search, they brought her to the Meycauayan Police Station and detained her for one day for

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[8] *Id.* at 135-139; 150-152.

[9] *Id.* at 139-142.

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

[11] *Id.* at 152.

alleged violations of the anti-drug law. Appellant further testified that at the time the policemen arrested her, her children were playing about three meters away from her house and that no one saw her being brought to the police station.[12]

To corroborate appellant's testimony, Teresa Manebo (Manebo), her neighbor, testified that on 9 June 2003, at about 4:00 p.m., while she was at the artesian well inside appellant's compound, a man in civilian clothes arrived and knocked at the door of the comfort room where appellant was taking a bath. Appellant informed the man to wait as she was dressing while Manebo was looking at them. Another man arrived as appellant went out of the comfort room. The men talked to appellant for about 30 minutes. They asked her about the whereabouts of her husband. Afterwards, four other men arrived. Appellant and the men went inside the house. When they came out, she saw appellant crying as the men took her away.[13]

On cross-examination, Manebo declared that the two persons who arrived came one after the other within a ten-minute interval. They talked with appellant for about 30 minutes. She admitted that she did not hear the entire conversation. When the four other men arrived, they went upstairs, and stayed there for an hour.[14] At the time appellant was talking with the two men, she was just two meters away from them. The men asked appellant about her husband's whereabouts. She watched them for 30 minutes.[15]

In a Decision[16] dated 21 February 2006, the Regional Trial Court (RTC) of the City of Malolos, Bulacan, Branch 78 found

[12] *Id.* at 158-159; 163-167.

[13] *Id.* at 173-183.

[14] *Id.* at 186-188.

[15] *Id.* at 189-191.

[16] *Id.* at 205-212. The decision was penned by Judge Gregorio Sampaga, the dispositive portion of which reads as follows:

> WHEREFORE, the foregoing considered, this Court finds accused Geraldine Magat *y* Paderon ***GUILTY*** beyond reasonable doubt of the offense of [v]iolation of Sections 5 and 11, both under Art. II of R.A. [No.] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences h[er]:

her guilty beyond reasonable doubt of violating Sections 5[17] and 11[18] of R.A. No. 9165. Appellant filed a notice of appeal dated 7 March 2006 to the Court of Appeals.[19]

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1. In Criminal Case No. 2158-M-2003, to suffer the penalty of ***LIFE IMPRISONMENT AND A FINE OF ~~P~~500,000.00;*** and

2. In Criminal Case No. 2159-M-2003, to suffer the penalty of ***TWELVE YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF IMPRISONMENT AND A FINE OF ~~P~~300,000.00*****[.]**

In the service of her sentence, accused shall be credited with the entire period of her preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.

SO ORDERED. (*Id.* at 212)

[17] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[18] Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows: x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, *methamphetamine hydrochloride* or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[19] Record, pp. 215-216.

The Court of Appeals affirmed the decision of the RTC in a decision promulgated on 7 June 2007.[20] Appellant filed a notice of appeal dated 20 June 2007 with this Court.[21]

Appellant raised before this Court and the Court of Appeals the lone issue of whether the trial court erred in convicting her despite the prosecution's failure to establish the identity of the prohibited drugs, which constitute the *corpus delicti* of the offense.

The appeal is meritorious.

In all prosecutions for violation of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.[22] The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crimes.[23]

In the case at bar, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165[24] were not complied with. PO1

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[20] *Rollo*, pp. 2-13. The decision was penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Vicente Roxas and Ramon Garcia. The dispositive portion reads:

WHEREFORE, the foregoing considered, the appeal is ***DENIED***. No costs.

SO ORDERED. (*Id.* at 12)

[21] *Id.* at 14-15.

[22] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[23] *People v. Almeida*, 463 Phil. 637, 648 (2003), citing *People v. Mendiola*, 235 SCRA 116 (1994). See also *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 61, citing *People v. Mendiola, supra*; *People v. Macuto*, 176 SCRA 762 (1989); *People v. Vocente*, 188 SCRA 100 (1990); and *People v. Mariano*, 191 SCRA 136 (1990).

[24] **Sec. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody

Santos admitted that he marked the two plastic sachets containing white crystalline substance in the police station.[25] He did not mark the seized items immediately after he arrested appellant in the latter's presence. He also did not make an inventory and take a photograph of the confiscated materials in the presence of appellant. Other than the three policemen, there were no other people who participated in the alleged buy-bust operation.[26] There was no representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of the statutory safeguards were observed.

A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.[27]

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of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> a) The apprehending team having initial custody and control of the drugs **shall, immediately after seizure and confiscation**, physically inventory and photograph the same **in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof; x x x. (Emphasis supplied)

[25] Record, pp. 139-140.

[26] *Id.* at 150; 152.

[27] Board Regulation No. 3, S. 1979 as amended by Board Regulation No. 2, S. 1990 cited in *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 69, reads:

Subject: Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.

In *People v. Laxa*,[28] the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the *corpus delicti*.[29]

Similarly, in *People v. Kimura*,[30] the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the *corpus delicti*.

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SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, **should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof.** Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination. (Emphasis supplied)

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.

[28] 414 Phil. 156 (2001).

[29] *Id.* at 170-171.

[30] G.R. No. 130805, 27 April 2004, 428 SCRA 51, 69-70.

In *Zaragga v. People*,[31] involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized *shabu* immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti*.[32]

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.

In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling

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[31] G.R. No. 162064, 14 March 2006, 484 SCRA 639.

[32] *Id.* at 647-651.

evidence than that applied to criminal cases involving objects which are readily identifiable.

R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the *corpus delicti*. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.

Recently, in *People v. Santos, Jr.*,[33] which involved violation of Sections 5 and 11, Article II of R.A. No. 9165, the Court agreed with the Office of the Solicitor General's observation that the identity of the *corpus delicti* has not been sufficiently established since the confiscated plastic sachets of *shabu* have been marked/initialed at the scene of the crime, according to proper procedure. Citing *People v. Lim*,[34] which specified that any apprehending team having initial control of illegal drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with such requirement raises doubt whether what was submitted for laboratory examination and presented in court is the same drug and/or paraphernalia as that actually recovered from the accused.

While the seized drugs may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight if the procedure in Section 21 of R.A. No. 9165 was not complied with. The Court stressed that the admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the *corpus delicti*. The admissibility of evidence depends on its relevance and competence while the

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[33] G.R. No. 175593, 17 October 2007, 536 SCRA 489, 504-505.

[34] G.R. No. 141699, 7 August 2002, 386 SCRA 581, 597-598, citing Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, S. 1990.

weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[35]

The presumption of regularity in the performance of official duty relied upon by the courts *a quo* cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[36] Although the evidence for the defense is weak, the prosecution must rely on the weight of its own evidence and cannot draw strength from the weakness of the defense.[37]

All told, the *corpus delicti* in this case is not legally extant.

WHEREFORE, the Decision dated 21 February 2006 of the Regional Trial Court of Malolos, Bulacan, Branch 78 in Criminal Case Nos. 2158-M-2003 and 2159-M-2003 is *REVERSED* and *SET ASIDE*. Appellant Geraldine Magat *y* Paderon is *ACQUITTED* of the crimes charged on the ground of reasonable doubt and ordered immediately *RELEASED* from custody, unless she is being held for some other lawful cause.

The Director of the Bureau of Corrections is *ORDERED* to implement this decision forthwith and to *INFORM* this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement.

Let a copy of this decision be forwarded to the PNP Director and the Director General of the Philippine Drug Enforcement Agency for proper guidance and implementation. No costs.

SO ORDERED.

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

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[35] *People v. Turco*, 392 Phil. 498, 516 (2000). See also *Ayala Land, Inc. v. ASB Realty Corporation and E. M. Ramos and Sons, Inc*., G.R. No. 153667, 11 August 2005, 466 SCRA 521, citing *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, 23 September 2004, 439 SCRA 1; *PNOC Shipping & Transport Corp. v. CA*, 358 Phil. 38 (2000); *De la Torre v. CA*, 355 Phil. 628 (1998).

[36] *People v. Sevilla*, 394 Phil. 125, 158 (2000), citing *People v. Pagaura*, 267 SCRA 17 (1997), and *People v. De los Santos*, 314 SCRA 303 (1999).

[37] *People v. Samson*, 421 Phil. 104, 122 (2001).

SECOND DIVISION

[G.R. No. 180394. September 29, 2008]

MARJORIE B. CADIMAS, by her Attorney-In-Fact, VENANCIO Z. ROSALES, *petitioner, vs.* **MARITES CARRION and GEMMA HUGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE NATURE OF AN ACTION AND THE JURISDICTION OF A TRIBUNAL ARE DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW AT THE TIME THE ACTION WAS COMMENCED. — The nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. Jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; PRESIDENTIAL DECREE NO. 1344; HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION; ELUCIDATED. — An examination of Section 1 of Presidential Decree (P.D.) No. 1344, which enumerates the regulatory functions of the HLURB, readily shows that its quasi-judicial function is limited to hearing only the following specific cases: SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature: A. Unsound real estate business practices; B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker, or salesman; and C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer or salesman. The aforequoted provision must

be read in the light of the statute's preamble or the introductory or preparatory clause that explains the reasons for its enactment or the contextual basis for its interpretation. x x x The NHA or the HLURB has jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in. Note particularly paragraphs (b) and (c) of Sec. 1, P.D. No. 1344 as worded, where the HLURB's jurisdiction concerns cases commenced *by* subdivision lot or condominium unit buyers. As to paragraph (a), concerning "unsound real estate practices," the logical complainants would be the buyers and customers against the sellers (subdivision owners and developers or condominium builders and realtors), and not *vice versa*.

3. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; REGIONAL TRIAL COURT; HAS JURISDICTION OVER THE CASE BASED ON THE ALLEGATIONS OF THE COMPLAINT; EXPLAINED. — We agree with the ruling of the RTC that it has jurisdiction over the case based on the allegations of the complaint. Nothing in the complaint or in the contract to sell suggests that petitioner is the proper party to invoke the jurisdiction of the HLURB. There is nothing in the allegations in the complaint or in the terms and conditions of the contract to sell that would suggest that the nature of the controversy calls for the application of either P.D. No. 957 or P.D. No. 1344 insofar as the extent of the powers and duties of the HLURB is concerned. The complaint does not allege that petitioner is a subdivision lot buyer. The contract to sell does not contain clauses which would indicate that petitioner has obligations in the capacity of a subdivision lot developer, owner or broker or salesman or a person engaged in real estate business. From the face of the complaint and the contract to sell, petitioner is an ordinary seller of an interest in the subject property who is seeking redress for the alleged violation of the terms of the contract to sell. Petitioner's complaint alleged that a contract to sell over a townhouse was entered into by and between petitioner and respondent Carrion and that the latter breached the contract when Carrion transferred the same to respondent Hugo without petitioner's consent. Thus, petitioner sought the cancellation of the contract and the recovery of possession and ownership of the town house.

Clearly, the complaint is well within the jurisdiction of the RTC.

APPEARANCES OF COUNSEL

Tristram B. Zoleta for petitioner.
Real Brotarlo & Real for respondents.

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] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 98572. The appellate court set aside two orders[4] of the Regional Trial Court (RTC), Branch 85, Quezon City issued in Civil Case No. Q-04-53581 on the ground that the trial court had no jurisdiction over the case.

The instant petition stemmed from the complaint[5] for *accion reivindicatoria* and damages filed by petitioner Marjorie B. Cadimas, through her attorney-in-fact, Venancio Z. Rosales, against respondents Marites Carrion and Gemma Hugo. The complaint was docketed as Civil Case No. Q-04-53581 and raffled to Branch 85 of the RTC of Quezon City.

In the complaint, petitioner averred that she and respondent Carrion were parties to a Contract To Sell dated 4 August 2003, wherein petitioner sold to respondent Carrion a town house located at Lot 4-F-1-12 No. 23 Aster Street, West Fairview

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[1] *Rollo*, pp. 10-27.

[2] Dated 27 September 2007 and penned by *J.* Myrna Dimaranan-Vidal and concurred in by *JJ.* Jose C. Reyes, Jr., Acting Chairperson of the Special 8th Division, and Japar B. Dimaampao; *id.* at 53-62.

[3] Dated 9 November 2007; *id.* at 70.

[4] *Id.* at 48-52.

[5] Records, pp. 2-13.

Park Subdivision, Quezon City for the sum of ₱330,000.00 to be paid in installments. According to petitioner, Carrion had violated paragraph 8 of said contract when she transferred ownership of the property to respondent Hugo under the guise of a special power of attorney, which authorized the latter to manage and administer the property for and in behalf of respondent Carrion. Allegedly, petitioner asked respondent Carrion in writing to explain the alleged violation but the latter ignored petitioner's letter, prompting petitioner to demand in writing that Carrion and Hugo vacate the property and to cancel the contract.[6]

On 28 October 2004, petitioner filed a Motion To Declare Defendant Marites Carrion In Default,[7] alleging that despite the service of summons and a copy of the complaint, respondent Carrion failed to file a responsive pleading within the reglementary period.

Respondent Hugo filed a Motion To Dismiss[8] on her behalf and on behalf of respondent Carrion on 18 November 2004, citing the grounds of lack of jurisdiction to hear the case on the part of the RTC and estoppel and/or laches on the part of petitioner. Respondent Hugo argued that the Housing and Land Use Regulatory Board (HLURB) has jurisdiction over the complaint because ultimately, the sole issue to be resolved was whether petitioner, as the owner and developer of the subdivision on which the subject property stood, was guilty of committing unsound real estate business practices.

In the same motion, respondent Hugo averred that the RTC had not acquired jurisdiction over the person of respondent Carrion for not complying with Section 16, Rule 14 of the Rules of Court on the proper service of summons on a non-resident defendant. However, attached to the motion was a special power of attorney, whereby respondent Carrion had authorized

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[6] *Id.* at 1.

[7] *Id.* at 34-36.

[8] *Id.* at 50-65.

respondent Hugo, among others, to manage and administer the subject property and to prosecute and defend all suits to protect her rights and interest in said property.[9]

After petitioner filed a comment on the motion to dismiss, the RTC issued an Omnibus Order[10] on 21 March 2005, which denied the motion to dismiss. The RTC held that the court's jurisdiction is not determined by the defenses set up in the answer or the motion to dismiss.

In the same omnibus order, the RTC ruled that summons was served properly, thus, the court had acquired jurisdiction over respondent Carrion. The RTC noted that respondent Hugo's failure to disclose at the outset that she was equipped with a special power of attorney was an act constitutive of misleading the court. Thus, the RTC declared respondent Carrion in default, directed petitioner to present evidence *ex-parte* against respondent Carrion, and respondent Hugo to file an answer.

On 18 April 2005, respondent Hugo filed an answer on her behalf and as the attorney-in-fact of respondent Carrion.[11] The answer pleaded a compulsory counterclaim for damages. The following day, petitioner presented evidence *ex-parte* against respondent Carrion. Thus, on 22 April 2005, respondent Hugo sought a reconsideration of the omnibus order, praying for the dismissal of the complaint, the cancellation of the presentation of evidence *ex-parte*, the lifting of the order of default against respondent Carrion and the issuance of an order directing the extraterritorial service of summons on respondent Carrion.[12]

On 17 January 2007, the RTC issued an order, upholding its jurisdiction over petitioner's complaint. Citing the interest of substantial justice, the RTC lifted the order of default against respondent Carrion and set the pre-trial conference of the case.[13]

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[9] *Id.* at 66-67.

[10] *Rollo*, pp. 48-50.

[11] Records, pp. 189-199.

[12] *Id.* at 258-276.

[13] *Rollo*, pp. 51-52.

However, respondents elevated the matter to the Court of Appeals via a special civil action for *certiorari*, praying that the Omnibus Order dated 21 March 2005 and Order dated 17 January 2007 issued by Judge Teodoro T. Riel be reversed and set aside and that the complaint in Civil Case No. Q-04-53581 be dismissed for lack of jurisdiction.

On 27 September 2007, the Court of Appeals rendered the assailed Decision granting respondents' petition for *certiorari*. The appellate court set aside the assailed orders of the RTC and ordered the dismissal of petitioner's complaint for lack of jurisdiction. In its Resolution dated 9 November 2007, the Court of Appeals denied petitioner's motion for reconsideration.

Hence, the instant petition, raising the following arguments: (1) based on the allegations in the complaint, the RTC has jurisdiction over Civil Case No. Q-04-53581; (2) in any case, respondents have expressly submitted to or recognized the jurisdiction of the RTC by filing an answer with counterclaim; and (3) respondents erroneously availed of a Rule 65 petition instead of filing a timely appeal from the order denying their motion to dismiss.[14]

Essentially, petitioner argues that based on the allegations in the complaint and the reliefs sought, the RTC has jurisdiction over the matter. In any case, the compulsory counterclaim pleaded in the answer of respondents was an express recognition on their part of the jurisdiction of the RTC over the complaint for *accion reivindicatoria*, petitioner adds.

The petition is meritorious.

The nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. Jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.[15]

[14] *Id.* at 16.

[15] *Laresma v. Abellana*, G.R. No. 140973, 11 November 2004, 442 SCRA 156, 169.

An examination of Section 1 of Presidential Decree (P.D.) No. 1344,[16] which enumerates the regulatory functions of the HLURB,[17] readily shows that its quasi-judicial function is limited to hearing only the following specific cases:

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[16] P.D. No. 1344, Section 1. In the exercise of its business functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

A. Unsound real estate business practices;

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

[17] *Arranza v. B.F. Homes, Inc.*, 389 Phil. 318, 329 (2000) traces the antecedent laws creating and transferring the regulatory functions of the HLURB, *to wit*:

> Presidential Decree (P.D.) No. 957 (The Subdivision and Condominium Buyers' Protective Decree) was issued on 12 July 1976 in answer to the popular call for correction of pernicious practices of subdivision owners and/or developers that adversely affected the interests of subdivision lot buyers. x x x
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> x x x x x x x x x
>
> Section 3 of P.D. No. 957 empowered the National Housing Authority (NHA) with the "exclusive jurisdiction to regulate the real estate trade and business." On 2 April 1978, P.D. No. 1344 was issued to expand the jurisdiction of the NHA to include the following:
>
> SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

A. Unsound real estate business practices;
B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker, or salesman; and
C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer or salesman.

The aforequoted provision must be read in the light of the statute's preamble or the introductory or preparatory clause that explains the reasons for its enactment or the contextual basis for its interpretation. The scope of the regulatory authority thus lodged in the National Housing Authority (NHA) [now HLURB] is indicated in the second and third preambular paragraphs of the statute which provide:

"WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure

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Thereafter, the regulatory and quasi-judicial functions of the NHA were transferred to the Human Settlements Regulatory Commission (HSRC) by virtue of Executive Order No. 648 dated 7 February 1981. Section 8 thereof specifies the functions of the NHA that were transferred to the HSRC including the authority to hear and decide "cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers or salesmen and cases of specific performance." Executive Order No. 90 dated 17 December 1986 renamed the HSRC as the Housing and Land Use Regulatory Board (HLURB).

to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value."[18]

The boom in the real estate business all over the country resulted in more litigation between subdivision owners/developers and lot buyers with the issue of the jurisdiction of the NHA or the HLURB over such controversies as against that of regular courts. In the cases that reached this Court, the ruling has consistently been that the NHA or the HLURB has jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in.[19]

We agree with the ruling of the RTC that it has jurisdiction over the case based on the allegations of the complaint. Nothing in the complaint or in the contract to sell suggests that petitioner is the proper party to invoke the jurisdiction of the HLURB. There is nothing in the allegations in the complaint or in the terms and conditions of the contract to sell that would suggest that the nature of the controversy calls for the application of either P.D. No. 957 or P.D. No. 1344 insofar as the extent of the powers and duties of the HLURB is concerned.

Note particularly paragraphs (b) and (c) of Sec. 1, P.D. No. 1344 as worded, where the HLURB's jurisdiction concerns cases commenced *by* subdivision lot or condominium unit buyers. As to paragraph (a), concerning "unsound real estate practices," the logical complainants would be the buyers and customers against the sellers (subdivision owners and developers or condominium builders and realtors), and not *vice versa*.[20]

The complaint does not allege that petitioner is a subdivision lot buyer. The contract to sell does not contain clauses which

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[18] *Antipolo Realty Corp. v. National Housing Authority*, No. 50444, 31 August 1987 153 SCRA 399, 408.

[19] *Arranza v. B.F. Homes, Inc.*, 389 Phil. 318, 330 (2000).

[20] *Roxas v. Court of Appeals*, 439 Phil. 966, 978 (2002).

would indicate that petitioner has obligations in the capacity of a subdivision lot developer, owner or broker or salesman or a person engaged in real estate business. From the face of the complaint and the contract to sell, petitioner is an ordinary seller of an interest in the subject property who is seeking redress for the alleged violation of the terms of the contract to sell. Petitioner's complaint alleged that a contract to sell over a townhouse was entered into by and between petitioner and respondent Carrion and that the latter breached the contract when Carrion transferred the same to respondent Hugo without petitioner's consent.[21]

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[21] The essential averments in the complaint read:

III. Plaintiff is an owner of a parcel of land with existing improvements consisting of several residential units located at Aster St., West Fairview Park Subdivision, Fairview, Quezon City[,] copy of her title, Transfer Certificate Title No. N-251570 issued by the Registry of Deeds of Quezon City is hereto attached and made part hereof, as Annex "B";

IV. Sometime in August 2003, the defendant MARITES CARRION (defendant CARRION, for brevity) offered to buy one of the plaintiff's residential units located at #23 Aster St., West Fairview Park Subdivision, Fairview, Quezon City designated as, Lot 4-F-1-12 and covered by said TCT No. 251570, copy of the Contract to Sell which the plaintiff and defendant CARRION entered into on August 4, 2003 is hereto attached and made part hereof, as Annex "C";

V. Under paragraph 8 of the Contract to Sell[,] Annex "C" hereof, it is expressly provided that defendant CARRION *cannot sell, mortgage, cede and/or transfer* the rights conferred upon her in the contract unless with the *written consent* of the plaintiff, thus,

x x x x x x x x x

Despite the express provision of paragraph 8 of the Contract to Sell[,] Annex "C" hereof, defendant CARRION without the knowledge and/or consent (in writing) of the plaintiff, *alienated/transferred* the ownership of the property subject hereof, in favor of defendant GEMMA HUGO (defendant HUGO for brevity) under the guise of allegedly being defendant CARRION'S attorney-in-fact when in truth and in fact, the latter is not;

x x x x x x x x x

X. Despite the plaintiff's [advice] and demands, defendant CARRION failed and refused to vacate and surrender the possession and ownership of the subject premises thus, the plaintiff through Rosales (again) addressed defendant CARRION a letter under date April 26, 2004 reiterating her previous demand to vacate and surrender the possession of the premises, failing which, she has no other alternative but to resort to the remedies provided by law, copy

Thus, petitioner sought the cancellation of the contract and the recovery of possession and ownership of the town house. Clearly, the complaint is well within the jurisdiction of the RTC.

In *Javellana v. Hon. Presiding Judge, RTC, Branch 30, Manila*,[22] the Court affirmed the jurisdiction of the RTC over the complaint for *accion publiciana* and sum of money on the ground that the complaint did not allege that the subject lot was part of a subdivision project but that the sale was an ordinary sale on an installment basis. Even the mere assertion that the defendant is a subdivision developer or that the subject lot is a subdivision lot does not automatically vest jurisdiction on the HLURB. On its face, the complaint must sufficiently describe the lot as a subdivision lot and sold by the defendant in his capacity as a subdivision developer to fall within the purview of P.D. No. 957 and P.D. No. 1344 and thus within the exclusive jurisdiction of the HLURB.[23]

In their comment, respondents cite *Antipolo Realty Corp. v. National Housing Authority*,[24] to bolster the argument that the HLURB has jurisdiction over controversies involving the determination of the rights of the parties under a contract to sell a subdivision lot. *Antipolo Realty* is not squarely applicable to the instant controversy. The issue in said case called for the determination of whether the developer complied with its obligations to complete certain specified improvements in the subdivision within the specified period of time, a case that clearly falls under Section 1, paragraph (c) of P.D. No. 1344.

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of said letter is hereto attached and made part hereof, as Annex "F", however despite demand(s), defendant CARRION and all persons claiming rights under her, particularly defendant HUGO failed and refused to vacate and surrender the possession and ownership of the subject property which lawfully belonged to the plaintiff by reason of the cancellation of the contract to sell Annex "C" hereof.

[22] G.R. No. 139067, 23 November 2004, 443 SCRA 497, 506-510.

[23] *Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio*, G.R. No. 165973, 29 June 2005, 462 SCRA 290, 295-296.

[24] No. 50444, 31 August 1987, 153 SCRA 399.

In the instances where the jurisdiction of the HLURB was upheld, the allegations in the complaint clearly showed that the case involved the determination of the rights and obligations of the parties in a sale of real estate under P.D. No. 957,[25] or the complaint for specific performance sought to compel the subdivision developer to comply with its undertaking under the contract to sell,[26] or the claim by the subdivision developer would have been properly pleaded as a counterclaim in the HLURB case filed by the buyer against the developer to avoid splitting causes of action.[27]

The statement in *Suntay v. Gocolay*[28] to the effect that P.D. No. 957 encompasses all questions regarding subdivisions and condominiums, which was cited by the Court of Appeals in the assailed decision, is a mere *obiter dictum*. As a matter of fact, the Court in *Suntay* nullified the orders issued by the HLURB over the action for the annulment of an auction sale, cancellation of notice of levy and damages on the ground of lack of jurisdiction. P.D. No. 957 and P.D. No. 1344 were not the applicable laws because the action was brought against a condominium buyer and not against the developer, seller, or broker contemplated under P.D. No. 1344. The action likewise involved the determination of ownership over the disputed condominium unit, which by its nature does not fall under the classes of disputes cognizable by the HLURB under Section 1 of P.D. No. 1344.

The Court of Appeals held that the provision in the contract to sell mandating membership of the buyer of the housing unit in a housing corporation was a strong indication that the property purchased by respondent Carrion from petitioner was part of a tract of land subdivided primarily for residential purposes. Thus, the appellate court concluded that the HLURB has jurisdiction

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[25] *HLC Construction and Development Corporation v. EHSHA*, 458 Phil. 392 (2003).

[26] *Siasoco v. Narvaja*, 373 Phil. 766 (1999).

[27] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, 8 September 2005, 469 SCRA 424.

[28] G.R. No. 144892, 23 September 2005, 470 SCRA 627.

over the controversy because the property subject thereof was part of a subdivision project.

Not every controversy involving a subdivision or condominium unit falls under the competence of the HLURB[29] in the same way that the mere allegation of relationship between the parties, *i.e.*, that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of P.D. No. 1344.[30] Notably, in *Spouses Dela Cruz v. Court of Appeals*,[31] the Court upheld the jurisdiction of the RTC over the complaint for cancellation of the contract to sell of a subdivision house and lot because the case did not fall under any of the cases mentioned in Section 1, P.D. No. 1344. In interpreting said provision, the Court explained, thus:

> On this matter, we have consistently held that the concerned administrative agency, the National Housing Authority (NHA) before and now the HLURB, has jurisdiction over complaints aimed at compelling the subdivision developer to comply with its contractual and statutory obligations.

For their part, respondents claim that the resolution of the case ultimately calls for the interpretation of the contract to sell and the determination of whether petitioner is guilty of committing unsound real estate business practices, thus, the proper forum to hear and decide the matter is the HLURB. The argument does not impress.

It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or

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[29] *Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio, supra* note 23.

[30] *Roxas v. Court of Appeals*, 439 Phil. 966, 976 (2002).

[31] G.R. No. 151298, 17 November 2004, 442 SCRA 492.

upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.[32] Thus, the allegations in respondents' motion to dismiss on the unsound real estate business practices allegedly committed by petitioner, even if proved to be true, cannot serve to oust the RTC of its jurisdiction over actions for breach of contract and damages which has been conferred to it by law.

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED* and the Decision dated 27 September 2007 and Resolution dated 9 November 2007 of the Court of Appeals in CA-G.R. SP No. 98572 are *REVERSED* and *SET ASIDE*. The orders dated 21 March 2005 and 17 January 2007 of the Regional Trial Court, Branch 85, Quezon City in Civil Case No. Q-04-53581 are *REINSTATED.* The Regional Trial Court is *ORDERED* to resume the proceedings in and decide Civil Case No. Q-04-53581 with deliberate speed. Costs against respondents.

SO ORDERED.

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

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[32] *Serdoncillo v. Spouses Benolirao,* 358 Phil. 83, 94-95 (1998).

EN BANC

[A.C. No. 7902. September 30, 2008]

TORBEN B. OVERGAARD, *complainant, vs.* **ATTY. GODWIN R. VALDEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; ATTORNEYS; DISBARMENT OR SUSPENSION; GROUNDS. — Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; ATTORNEYS; DECEITFUL CONDUCT, ELUCIDATED. — Canon 1, Rule 1.01 of the Code of Professional Responsibility states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals. It is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to justice, honesty, modesty, or good morals. Representing to the complainant that he would take care of the cases filed against him, assuring the complainant that his property involved in a civil case would be safeguarded, and then collecting the full amount of legal fees of PhP900,000.00, only to desert the complainant after receipt of the fees, were manifestly deceitful and dishonest.

3. ID.; ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; THE RELATIONSHIP OF AN ATTORNEY TO HIS CLIENT IS

HIGHLY FIDUCIARY; CASE AT BAR. — The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of Professional Responsibility provides that "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client." Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client. A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him. However, instead of devoting himself to the client's cause, the respondent avoided the complainant, forgot about the cases he was handling for him and ostensibly abandoned him. The client reposed his trust in his lawyer with full faith that the lawyer would not betray him or abscond from his responsibilities. By assuring the complainant that he would take care of the cases included in the Retainer Agreement, and even accepting fees, the respondent defrauded the complainant when he did not do a single thing he was expected to do.

4. ID.; ID.; ID.; ID.; ACCEPTANCE OF MONEY FROM A CLIENT ESTABLISHES AN ATTORNEY-CLIENT RELATIONSHIP AND GIVES RISE TO THE DUTY OF FIDELITY TO THE CLIENT'S CAUSE; CASE AT BAR. — Rule 16.01, Canon 16 of the Code of Professional Responsibility, provides that "a lawyer shall account for all money and property collected or received for and from the client." The complainant paid $16,854.00 to the respondent via telegraphic bank transfer. This was considered as complete payment for the PhP900,000.00 that was stipulated as the consideration for the legal services to be rendered. However, since the respondent did not carry out any of the services he was engaged to perform, nor did he appear in court or make any payment in connection with litigation, or give any explanation as to how such a large sum of money was spent and allocated, he must immediately return the money he received from the client upon demand. However, he refused to return the money he received from the complainant despite written demands, and was not even able to give a single report regarding the status of the cases. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Money entrusted to a lawyer for a specific purpose — such as for filing fees — but not used for failure to file the case, must immediately be returned to the client on demand.

5. ID.; ATTORNEYS; PRACTICE OF LAW; NOT A RIGHT BUT A PRIVILEGE AND GRANTED ONLY TO THOSE OF GOOD MORAL CHARACTER; CASE AT BAR. — The practice of law is not a right, but a privilege. It is granted only to those of good moral character. The Bar must maintain a high standard of honesty and fair dealing. Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. The respondent demonstrated not only appalling indifference and lack of responsibility to the courts and his client but also a wanton disregard for his duties as a lawyer. It is deplorable that members of the bar, such as the respondent, betray not only the trust of their client, but also public trust. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law. We must protect the administration of justice by requiring those who exercise this function to be competent, honorable and reliable in order that the courts and clients may rightly repose confidence in them.

6. ID.; ID.; MALPRACTICE AND GROSS MISCONDUCT; PENALTY. — In this case, we find that suspension for three years recommended by the IBP is not sufficient punishment for the unacceptable acts and omissions of respondent. The acts of the respondent constitute malpractice and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the bar. We could not find any mitigating circumstances to recommend a lighter penalty. For violating elementary principles of professional ethics and failing to observe the fundamental duties of honesty and good faith, the respondent has proven himself unworthy of membership in this noble profession.

APPEARANCES OF COUNSEL

Montesa and Associates for complainant.

D E C I S I O N

***PER CURIAM*:**

Complainant seeks the disbarment of Atty. Godwin R. Valdez from the practice of law for gross malpractice, immoral character, dishonesty and deceitful conduct. The complainant alleges that despite receipt of legal fees in compliance with a Retainer Agreement, the respondent refused to perform any of his obligations under their contract for legal services, ignored the complainant's requests for a report of the status of the cases entrusted to his care, and rejected demands for return of the money paid to him.

On December 16, 2005, the complainant, Torben B. Overgaard, a Dutch national, through his business partner John Bradley, entered into a Retainer Agreement[1] with the respondent, Atty. Godwin R. Valdez. For the amount of PhP900,000.00, the complainant engaged the services of the respondent to represent him as his legal counsel in two cases filed by him and two cases filed against him, all pending in Antipolo City; including a dismissed complaint which was appealed before the Department of Justice. The Agreement stipulated that fees would cover acceptance and attorney's fees, expenses of litigation, other legal incidental expenses, and appearance fees.[2]

The cases filed by the complainant included a complaint for Estafa, Grave Threats, Coercion, Unjust Vexation and Oral Defamation[3] pending before the Office of the City Prosecutor of Antipolo and a civil case for *Mandamus*, Injunction with prayer for Temporary Restraining Order and Damages[4] which

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[1] *Rollo*, p. 3.

[2] *Id*.

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

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

is on trial at Branch 71, Regional Trial Court of Antipolo City. On the other hand, the cases filed against the complainant included a criminal case for Other Light Threats at Branch 2 of the Municipal Trial Court of Antipolo,[5] and violation of Section 5(a) of Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004[6] before the Family Court of Antipolo City. A complaint for Illegal Possession of Firearms was also filed against Torben Overgaard which was dismissed by the City Prosecutor of Antipolo City. This was appealed to the Department of Justice by way of Petition for Review.[7]

Upon the execution of the Retainer Agreement, the complainant paid the respondent USD16,854.00 through telegraphic bank transfer,[8] as full payment for the services to be rendered under the Agreement. The respondent then assured the complainant that he would take good care of the cases he was handling for the complainant.[9]

On April 11, 2006, four months after the execution of the Retainer Agreement, the complainant, through his business partner John Bradley, demanded from the respondent a report of the action he had taken with respect to the cases entrusted to him. However, despite his continued efforts to contact the respondent to inquire on the status of the cases, he was unable to reach him; his phone calls were not answered and his electronic mails were ignored.[10]

The complainant had no knowledge of the developments of the cases that the respondent was handling for him. Upon his own inquiry, he was dismayed to find out that the respondent did not file his entry of appearance in the cases for Other Light Threats and Violation of Section 5(a) of the Anti-Violence Against

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

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

[7] *Id.,* p. 9.

[8] *Id.,* pp. 4, 45.

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

[10] *Id,* p. 46.

Women and Children Act.[11] The respondent also did not inform him that he was entitled to prepare a Counter-Affidavit to answer the complaint for Other Light Threats. The complainant had no knowledge that there had already been arraignments for the criminal cases against him, and that there were already warrants of arrest[12] issued for his failure to attend the arraignments. He was constrained to engage the services of another lawyer in order to file a Motion to Lift the Warrant of Arrest in the case for Other Light Threats,[13] and an Omnibus Motion to Revive the Case and Lift the Warrant of Arrest in the case for Violation of Section 5(a) of the Anti-Violence Against Women and Their Children Act.[14]

The complainant alleges that the respondent did not do a single thing with respect to the cases covered under the Retainer Agreement. Not only did the respondent fail to enter his appearance in the criminal cases filed against the complainant, he also neglected to file an entry of appearance in the civil case for *Mandamus*, Injunction and Damages that the complainant filed. The respondent also did not file a Comment on the complaint for Illegal Possession of Firearms which was dismissed and under review at the Department of Justice.[15]

Due to the above lapses of the respondent, on November 27, 2006, the complainant wrote the respondent and demanded the return of the documents which were turned over to him, as well as the PhP900,000.00 that was paid in consideration of the cases he was supposed to handle for the complainant.[16] However, complainant was unable to get any word from the respondent despite repeated and continuous efforts to get in touch with him.

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

[12] *Id.,* p. 10 and 11.

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

[14] *Id.,* p. 75.

[15] *Id.,* pp. 23-24.

[16] *Id.,* pp. 12 and 40.

Hence, on December 28, 2006, Torben Overgaard was constrained to file an administrative complaint against Atty. Godwin R. Valdez before the Integrated Bar of the Philippines, alleging that the respondent engaged in unlawful, dishonest, immoral and deceitful conduct.[17] Despite the order to submit an Answer to the complaint against him,[18] the respondent failed to comply. A Mandatory Conference was set on September 21, 2007,[19] but the respondent failed to attend despite being duly notified.[20] This prompted the Commission on Bar Discipline to issue an Order declaring the respondent in default for failure to submit an Answer and failure to attend the Mandatory Conference.[21] The investigation proceeded *ex parte.*

The complainant submitted his position paper on October 5, 2007,[22] with a prayer that the respondent be disbarred from the practice of law, and to be ordered to return the amount of PhP900,000.00. A Clarificatory Hearing was scheduled on December 11, 2007,[23] and again, it was only the complainant who was in attendance; the respondent failed to attend the hearing despite notice. The case was then submitted for resolution based on the pleadings submitted by the complainant and the hearings conducted.[24]

Integrated Bar of the Philippines (IBP) Investigating Commissioner Antonio S. Tria, to whom the instant disciplinary case was assigned for investigation, report and recommendation, found the respondent guilty of violating Canon 15, Canon 16, Rule 16.01, Canon 17, Canon 18, and Rule 18.04 of the Code

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[17] The administrative complaint was docketed as CBD Case No. 06-1894.

[18] *Rollo,* p. 13.

[19] *Id.,* p. 19.

[20] *Id.*

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

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

[23] *Id.,* p. 41.

[24] *Id.,* p. 43.

of Professional Responsibility. In his Report dated January 29, 2008, he recommended that respondent be suspended from the practice of law for a period of three (3) years. The IBP Board of Governors, through Resolution No. XVIII-2008-126, dated March 6, 2008, approved the recommendation of Commissioner Tria, and further ordered the complainant to return the PhP900,000.00 to the complainant within 60 days from receipt of the notice.

We agree. We find the respondent Atty. Godwin R. Valdez to have committed multiple violations of the canons of the Code of Professional Responsibility.

The appropriate penalty to be imposed on an errant attorney involves the exercise of sound judicial discretion based on the facts of the case. Section 27, Rule 138 of the Rules of Court provides, *viz*:

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

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty,

probity and good demeanor, or unworthy to continue as an officer of the court.

The respondent has indubitably fallen below the exacting standards demanded of members of the bar. He did not merely neglect his client's cause, he abandoned his client and left him without any recourse but to hire another lawyer. He not only failed to properly handle the cases which were entrusted to his care, he refused to do a single thing in connection with these cases. He did not file any pleading to defend his client; he did not even enter his appearance in these cases. Moreover, he disregarded the complainant's letters and electronic mails and rejected the complainant's phone calls. All the complainant was asking for was a report of the status of the cases but the respondent could not be reached no matter what the complainant did to get in touch with him. After receipt of the full amount of fees under the Retainer Agreement, he simply disappeared, leaving the client defenseless and plainly prejudiced in the cases against him. Warrants of arrest were even issued against the complainant due to the respondent's gross and inexcusable negligence in failing to ascertain the status of the case and to inform his client of the arraignment. It was not a mere failure on the respondent's part to inform the complainant of matters concerning the cases, it was an unmistakable evasion of duty. To hide from the complainant, avoid his calls, ignore his letters, and leave him helpless is unforgivable; and to commit all these acts and omissions after receiving the full amount of legal fees and after assuring the client of his commitment and responsibility violates the Code of Professional Responsibility.

Canon 1, Rule 1.01 of the Code of Professional Responsibility states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals.[25] It is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to justice, honesty, modesty,

[25] *In re Basa*, 41 Phil. 275, 276 (1920), citing Bouvier's *Law Dictionary*.

or good morals.[26] Representing to the complainant that he would take care of the cases filed against him,[27] assuring the complainant that his property involved in a civil case would be safeguarded,[28] and then collecting the full amount of legal fees of PhP900,000.00, only to desert the complainant after receipt of the fees, were manifestly deceitful and dishonest.

The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of Professional Responsibility provides that "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client." Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client. A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.[29] However, instead of devoting himself to the client's cause, the respondent avoided the complainant, forgot about the cases he was handling for him and ostensibly abandoned him. The client reposed his trust in his lawyer with full faith that the lawyer would not betray him or abscond from his responsibilities. By assuring the complainant that he would take care of the cases included in the Retainer Agreement, and even accepting fees, the respondent defrauded the complainant when he did not do a single thing he was expected to do.

A lawyer shall serve his client with competence and diligence.[30] A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.[31] Respondent should indeed be held liable, for he was not just incompetent, he was practically useless; he was not just negligent, he was indolent; and rather than being of help to the complainant, he prejudiced the client. Respondent's

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[26] *In re Gutierrez*, AC No. L-363, July 31, 1962, 5 SCRA 661.

[27] *Rollo* at p. 4.

[28] *Id.,* at p. 26.

[29] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 17.

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

[31] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18, Rule 18.03.

inaction with respect to the matters entrusted to his care is obvious; and his failure to file an answer to the complaint for disbarment against him and to attend the hearings in connection therewith, without any explanation or request for resetting, despite proper notice from the IBP, is clear evidence of negligence on his part.

The Code of Professional Responsibility further provides that a lawyer is required to keep the client informed of the status of his case and to respond within a reasonable time to the client's request for information.[32] The respondent did the opposite. Despite the complainant's efforts to consult him and notwithstanding numerous attempts to contact him, simply to ask for an update of the status of the cases, the respondent was able to avoid the complainant and never bothered to reply.

After months of waiting for a reply from the respondent, and discovering that the respondent had been remiss in his duties, the complainant demanded the return of the documents he had turned over to the respondent. He also demanded the return of the money he had paid for the legal services that were not rendered and expenses of litigation which were not incurred. However, the respondent rejected the complainant's demands.

Rule 16.01, Canon 16 of the Code of Professional Responsibility, provides that "a lawyer shall account for all money and property collected or received for and from the client." The complainant paid $16,854.00 to the respondent via telegraphic bank transfer. This was considered as complete payment for the PhP900,000.00 that was stipulated as the consideration for the legal services to be rendered. However, since the respondent did not carry out any of the services he was engaged to perform, nor did he appear in court or make any payment in connection with litigation, or give any explanation as to how such a large sum of money was spent and allocated, he must immediately return the money he received from the client upon demand. However, he refused to return the money he received from the complainant despite

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[32] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18, Rule 18.04.

written demands, and was not even able to give a single report regarding the status of the cases.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Money entrusted to a lawyer for a specific purpose — such as for filing fees — but not used for failure to file the case, must immediately be returned to the client on demand.[33]

In ***Sencio v. Calvadores***,[34] the respondent lawyer Sencio was engaged to file a case, which he failed to do. His client demanded that he return the money which was paid to him but he refused. Sencio similarly failed to answer the complaint and disregarded the orders and notices of the IBP on many occasions.[35] The respondent lawyer was ordered to return the money that he received from the complainant with interest at 12% per annum from the date of the promulgation of the resolution until the return of the amount.[36]

The practice of law is not a right, but a privilege. It is granted only to those of good moral character.[37] The Bar must maintain a high standard of honesty and fair dealing.[38] Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large,[39] and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.[40]

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[33] *Barnachea v. Quiocho*, A.C. No. 5925, March 11, 2003, 399 SCRA 1.

[34] A.C. No. 5841, January 20, 2003, 395 SCRA 393.

[35] *Id*.

[36] See also *Emiliano Court Townhouses Homeowners Association v. Atty. Michael Dioneda*, A.C. No. 5162, March 20, 2003, 399 SCRA 296.

[37] *People v. Santodides*, G.R. No. 109149, December 21, 1999, 321 SCRA 310.

[38] *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.

[39] *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406.

[40] *Ere v. Rubi*, A.C. No. 5176, December 14, 1999, 320 SCRA 617.

The respondent demonstrated not only appalling indifference and lack of responsibility to the courts and his client but also a wanton disregard for his duties as a lawyer. It is deplorable that members of the bar, such as the respondent, betray not only the trust of their client, but also public trust. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character.[41] Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law. We must protect the administration of justice by requiring those who exercise this function to be competent, honorable and reliable in order that the courts and clients may rightly repose confidence in them.

In this case, we find that suspension for three years recommended by the IBP is not sufficient punishment for the unacceptable acts and omissions of respondent. The acts of the respondent constitute malpractice and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the bar. We could not find any mitigating circumstances to recommend a lighter penalty. For violating elementary principles of professional ethics and failing to observe the fundamental duties of honesty and good faith, the respondent has proven himself unworthy of membership in this noble profession.

IN VIEW WHEREOF, respondent Atty. Godwin R. Valdez is hereby *DISBARRED* and his name is ordered *STRICKEN* from the Roll of Attorneys. He is *ORDERED* to immediately return to Torben B. Overgaard the amount of $16,854.00 or its equivalent in Philippine Currency at the time of actual payment, with legal interest of six percent (6%) per annum from November 27, 2006, the date of extra-judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this

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[41] *Director of Religious Affairs v. Bayot*, 74 Phil. 477 (1944).

decision until the payment thereof. He is further *ORDERED* to immediately return all papers and documents received from the complainant.

Copies of this Decision shall be served on the Integrated Bar of the Philippines, the Office of the Bar Confidant and all courts.

SO ORDERED.

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

Corona, J., on official leave.

THIRD DIVISION

[A.M. No. MTJ-06-1631. September 30, 2008]
(Formerly A.M. OCA IPI No. 05-1744-MTJ)

FENINA R. SANTOS, *complainant, vs.* **JUDGE ERASTO D. TANCIONGCO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES ON SUMMARY PROCEDURE; CIVIL CASES; ANSWER; SHALL BE FILED WITHIN TEN (10) DAYS FROM RECEIPT OF SUMMONS. — The rules on summary procedure require that an answer be filed within ten (10) days from receipt of summons. Judge Tanciongco instead gave defendants fifteen (15) days from receipt of summons.

2. JUDICIAL ETHICS; JUDGES; RESPONDENT JUDGE OVERLOOKED A SUMMARY RULE WHICH IS A LAPSE IN PROCEDURE MADE WITHOUT BAD FAITH OR

CORRUPT MOTIVE; PENALTY. — Judge Tanciongco overlooked a summary rule. It is a lapse in procedure made without bad faith or corrupt motive. However, the Court is mindful of the fact that Judge Tanciongco is merely human and this Court has forgiven human errors in the past. Thus, the fine of Twenty Thousand Pesos (₱20,000.00) recommended by the investigating Judge is more reasonable and appropriate.

R E S O L U T I O N

REYES, R.T., *J.*:

Fenina R. Santos' verified letter-complaint[1] to the Office of the Court Administrator (OCA) initiated this administrative case against Judge Erasto D. Tanciongco of the First Municipal Circuit Trial Court (MCTC), Dinalupihan-Hermosa, Dinalupihan, Bataan for manifest bias, partiality and neglect of duty relative to Civil Case No. 1334.

On June 22, 2005, the OCA required Judge Tanciongco to submit a comment relative to the complaint. Judge Tanciongco filed his comment to the letter-complaint on September 2, 2005. On April 19, 2006, the Court's First Division referred this case to Hon. Jose Ener S. Fernando, Executive Judge, Regional Trial Court, Dinalupihan, Bataan, for investigation.

The case was immediately set for hearing. On July 17, 2006, Judge Fernando voluntarily inhibited himself from hearing the case due to doubts raised by Santos about the former's impartiality, since Judge Tanciongco had been the public prosecutor assigned to his *sala* from 1992 to 2002.

The OCA found that Santos failed to prove Judge Fernando's bias and prejudice with clear and convincing evidence, to be considered a valid justification for his inhibition. On July 26, 2006, the Court noted Judge Fernando's order inhibiting himself from the case, but directed him to proceed with the investigation and strictly comply with the Court's April 19, 2006 Resolution.

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[1] *Rollo*, pp. 1-4. Dated July 8, 2005.

On December 18, 2006, Judge Fernando terminated the investigation and submitted the case for resolution upon agreement of the parties. On March 12, 2007, Judge Fernando submitted his investigation report and recommendation.

The evidence for the complainant consists of Santos' letter, attached affidavit and testimony. Santos narrated that on December 16, 2003, she and her husband filed an action for forcible entry, temporary restraining order and injunction against Dominador Jimenez, Maria Jimenez, Herminia Salenga Tan, and Purita Salenga Pinpin, docketed as Civil Case No. 1334, before the MCTC of Dinalupihan-Hermosa, Dinalupihan, Bataan, presided by Judge Tanciongco.

Santos accused Judge Tanciongco of uncalled for liberality in accepting defendant's Answer which was filed beyond the ten-day reglementary period. She also alleged that Judge Tanciongco reset the case for hearing several times for the period February 5 to December 7, 2004. This was despite her pleas to cause the appearance of defendants in court. On three (3) occasions, Judge Tanciongco promised to act on her request, but defendants still failed to appear in court for the hearings of the case.

In view of defendants' continued non-appearance in court, Santos moved for the court to render judgment on the case. However, Judge Tanciongco allegedly suggested resetting the hearing of the case. Santos' counsel, Atty. Leopoldo C. Lacambra, withdrew from the case after filing the motion to render judgment.

On February 1, 2005, the counsel for defendants appeared for the first time in court. Santos was also present, and she manifested before Judge Tanciongco that she no longer had a counsel and that she wanted to know the outcome of the motion to render judgment. However, Judge Tanciongco ordered the start of the preliminary hearing of the case in the next hearing.

In contrast, Judge Tanciongco, in his Comment and testimony before the investigating Judge, denied the allegations of Santos. He maintained that he conducted hearings in accordance with law and observed due process by giving the parties and their

respective lawyers enough time and opportunity to be heard in court. He asserted that the delays were attributable to non-appearance of counsel and the parties.

Judge Tanciongco further explained that he did not act on the motion to render judgment because of his earnest desire for the parties to settle their dispute amicably. However, his efforts were in vain. Moreover, in view of the complaint against him, he voluntarily inhibited himself and requested the Supreme Court to designate another judge.

After hearing, the investigating Judge found Judge Tanciongco guilty of gross ignorance of the law and inefficiency tantamount to neglect of duty relative to Civil Case No. 1334. The pertinent portion of his report and recommendation reads:

> The culpability of respondent Judge lies on the propriety or impropriety of his acts. Respondent Judge was accused of manifest bias, partiality and neglect of duty relative to his actions in connection with Civil Case No. 1334. As a matter of policy the acts of a judge in his judicial capacity are not subject to disciplinary action — only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. While a judge is a man subject to the frailties of other men, his office is an exalted position in the administration of justice, thus, it behooves him to act with circumspection at all times in order to promote public confidence in the integrity and impartiality of the judiciary.
>
> Records reveal that the complainant filed her complaint for forcible entry with TRO and injunction on December 16, 2003. All cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered, shall be governed by the rules on summary procedure. Section 6, Rule 70 of the Revised rules of Civil Procedure provides that the defendant shall file his answer within ten (10) days from the service of the summons and his failure to answer the complaint within the said period, the court, *motu proprio* or motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint.
>
> Summons were issued on January 7, 2004. In their Answer, defendants Dominador and Maria Jimenez averred that they received the complaint on January 15, 2004. A close scrutiny of the Answer

reveals that it was prepared on January 26, 2004, verified only on January 27, 2004 and received by the MCTC on the same date. Surely, the ten (10)-day reglementary period fixed by law had already lapsed. Complainant filed her comment with motion to strike out answer, but this was not even acted upon by respondent Judge, claiming that he was trying to settle the issues amicably between the parties, but despite his efforts, the same failed and that the complainant filed her pre-trial brief which was tantamount to abandonment of the motion to strike out answer. The filing of the pre-trial brief does not necessarily mean that the complainant is abandoning her motion to strike out answer. Respondent Judge should have acted on it just the same. Unfortunately, he chose to ignore it.

Granting for the sake of liberality that the aforementioned acts of respondent Judge are justifiable, the undersigned would like to point at respondent Judge's ignorance of the law which was manifested when he required defendants to file their answer within fifteen (15) days from receipt of the summons, considering that this case is governed by the rules on summary procedure. This fact was even argued by Atty. Lacambra, but respondent Judge was relentless in his stance. When the law is so elementary, such as the provisions of the Revised Rules of Court on the rules on summary procedure, not knowing it or to act as if one does not know it, constitutes gross ignorance of the law. Gross ignorance of the law, incompetence and inefficiency are characteristics impermissible in a judge.

Respondent Judge's leniency towards the cause of the defendants, while it may not be erroneous, transgresses the constitutional right of the complainant to a speedy disposition of her case. It is the noble office of a judge to render justice not only impartially but expeditiously as well, for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lower its standards and brings it into disrepute.

On the issue of partiality and manifest bias, the rule is that mere suspicion that a judge is partial is not enough. Clear and convincing evidence to prove the charge is required. The burden to prove that respondent Judge committed the acts complained of rest on the complainant. It is complainant's asseveration that respondent Judge was protecting the defendants who are rich and influential; that some of them are townmates of the respondent judge; and they were sometimes seen together. These allegations remain as mere allegations without any evidence to support them. Complainant averred that her

sister and relatives saw the respondent Judge with the defendants talking and eating in a restaurant. However, said sister and relatives were not presented to testify on that allegation. Mere allegation of partiality and bias without more cannot discharge the burden bestowed upon the complainant to prove respondent Judge's partiality and bias. Charges against any member of the judiciary must be supported at least by substantial evidence. Applying the foregoing principles to this case, the undersigned finds that the charges of the complainant against respondent Judge for partiality and bias failed to measure up to the yardstick of substantial evidence.

On the charge of neglect of duty

This case has been pending before respondent Judge's *sala* for so long. As stated earlier, this case was filed on December 16, 2003, yet, the preliminary conference was set only on February 1, 2005. Considering that this case is governed by the rules on summary procedure, the undersigned could not find any justifiable reason on what took respondent Judge so long to act on it. His explanations that he tried to settle the case amicably and that the parties failed to appear at the scheduled hearings are but flimsy excuses for the long delay incurred. The delay could have been avoided had he exercised more diligence and determination in disposing the case.

Complainant also pointed out that there had been several settings of the case, particularly February 5 and 13, 2004 which were not documented. No order or minutes of these hearings appear on the records of the case and respondent Judge did not offer any explanation nor rebut complainant's allegations regarding this matter.

The filing of a motion to cancel hearing by the defendants one day before the scheduled hearing was prejudicial to the complainant's cause. Said dilatory motion for postponement is a violation of Section 19 of the Revised Rules on Summary Procedure.

On the scheduled hearing on July 21, 2004, the proceedings of said hearing are not found in the records of the case. According to the respondent Judge, they were in the possession of OIC Evelyn Roncal. Be that as it may, as an officer of the court having control and supervision over his staff, respondent Judge should organize and supervise his staff to ensure the prompt and efficient dispatch of business, as well as the observance of high standards of public service and fidelity at all times. He should adopt a system of records management, so that files are kept intact despite the temporary absence of the person primarily responsible for their custody.

When asked why he did not resolve the complainant's counsel motion to render judgment, respondent Judge averred that said motion was considered abandoned when Atty. Lacambra withdrew as counsel for the complainant. Fact is, said motion to render judgment was filed on October 8, 2004 (per registry receipt attached to it) while Atty. Lacambra's withdrawal as counsel was received by the MCTC on March 21, 2005, or around five (5) months had already lapsed. The failure of respondent Judge to act on the motion with reasonable dispatch constitutes gross inefficiency.

To recapitulate, respondent Judge was quite liberal in his dealings with defendants which greatly contributed to the delay in the disposition of this case. He cannot take refuge behind defendants' non-appearance in court. Delay in the disposition of cases not only deprives litigants of their right to speedy disposition of their cases but also tarnishes the image of the judiciary. Failure to dispose the court's business promptly within the periods prescribed by law and the rules constitutes gross inefficiency and warrants administrative sanction on the erring judge like respondent. It seems that respondent Judge developed a bad working habit, as evidenced by the resolution of the Supreme Court, Second Division, dated June 15, 2005 in A.M. No. MTJ-05-1592 (*Office of the Court Administrator vs. Judge Erasto D. Tanciongco, Virgilio P. Mejia, et al. of the Municipal Circuit Trial Court, Dinalupihan-Hermosa, Bataan*) wherein he was admonished for his failure to exercise due diligence in the supervision of his subordinates and to implement an effective and efficient records management system for prompt disposition of the court's business. He was also given a stern warning that a repetition of the same or similar lapses in the future shall be dealt with more severely. His inhibition later in this case does not absolve him from liability

WHEREFORE, it is respectfully submitted that respondent Judge Erasto Tanciongco be found GUILTY of gross ignorance of the law and inefficiency tantamount to neglect of duty relative to Civil Case No. 1334, hence, it is respectfully recommended that he be suspended for two (2) months and be fined in the amount of ₱20,000.00.

Dinalupihan, Bataan, March 12, 2007.[2]

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[2] *Id*. at 131-143.

The investigating Judge found Judge Tanciongco guilty of gross ignorance of the law and inefficiency tantamount to neglect of duty relative to Civil Case No. 1334 and recommended two (2) months suspension [2-a] and a fine in the amount of Twenty Thousand Pesos (₱20,000.00).

The OCA concurred with the findings of the investigating Judge but recommended that the fine be increased to Thirty Thousand Pesos (₱30,000.00).

We accept the findings of the investigating Judge. The rules on summary procedure require that an answer be filed within ten (10) days from receipt of summons. Judge Tanciongco instead gave defendants fifteen (15) days from receipt of summons. Apparently, Judge Tanciongco overlooked a summary rule. It is a lapse in procedure made without bad faith or corrupt motive.

However, the Court is mindful of the fact that Judge Tanciongco is merely human and this Court has forgiven human errors in the past.[3] Thus, the fine of Twenty Thousand Pesos (₱20,000.00) recommended by the investigating Judge is more reasonable and appropriate.

WHEREFORE, a *FINE* of Twenty Thousand Pesos (₱20,000.00) is imposed on Judge Tanciongco, the same to be deducted from his retirement benefits.

SO ORDERED.

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

[2-a] The penalty of suspension is no longer favorable on account of respondent Judge's retirement on June 22, 2007 per OCA Memorandum dated July 6, 2007.

[3] *Apiag v. Cantero,* A.M. No. MTJ-95-1070, February 12, 1997, 268 SCRA 47.

FIRST DIVISION

[A.M. No. P-06-2137. September 30, 2008]

RE: UNAUTHORIZED ABSENCES FROM THE POST OF PEARL MARIE N. ICAMINA, Legal Researcher, Regional Trial Court, Branch 8, Kalibo, Aklan.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL MUST OBSERVE THE PRESCRIBED OFFICE HOURS. — Pursuant to the constitutional mandate that public office is a public trust, court personnel must observe the prescribed office hours and use this time efficiently for public service, "if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary." It is for this reason that Administrative Circular No. 2-99 provides: I. Accordingly, all courts, must observe the following office hours, without, however, prejudice to the approved flexi-time of certain personnel; MONDAY TO FRIDAY 8:00 A.M. to 12:00 N 1:00 P.M. to 5:00 P.M.

2. ID.; ID.; ID.; ID.; CODE OF CONDUCT; LOAFING EFFECT. — Section 1, Canon IV of the Code of Conduct for Court Personnel reiterates the commitment required in the performance of official duties: "SECTION 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours." Court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be circumscribed with a high degree of professionalism and responsibility, because the image of a court of justice necessarily mirrors the conduct of court officials and employees. Thus, court personnel must strictly observe official time to inspire public respect for the justice system. Loafing or frequent unauthorized absences from duty during regular office hours results in inefficiency, dereliction of duty, and adversely affects the prompt delivery of justice.

3. REMEDIAL LAW; EVIDENCE; CHARGE OF LOAFING PROVEN BY SUBSTANTIAL EVIDENCE; CASE AT BAR. — The charge of loafing or frequent unauthorized absences from duty during regular office hours was proven by substantial evidence. Frequent connotes that "the employees absent themselves from duty more than once." The logbook entries maintained by the security guards manning the Hall of Justice reveal the frequency of respondent's loafing. The entries show that from July 15, 2003 to August 15, 2006, respondent left the Hall of Justice in the mornings and afternoons almost daily. The investigating judge found that respondent's excursions lasted from 30 minutes to two (2) hours, and "there were times when she would check out three times in the afternoon."

4. ID.; ID.; RESPONDENT'S FAILURE TO REFUTE ACCUSATIONS; CASE AT BAR. — We find respondent's explanation unsatisfactory, because she failed to refute the accusations made against her. Respondent admitted that she went home during office hours for personal errands. Respondent's justification for her time outside the office, that she was completing research in the RTC, IBP, or Aklan Catholic College libraries, has no merit. As the RTC and IBP libraries are inside the Hall of Justice, respondent had no reason to leave court premises during office hours. Respondent did not present evidence to support her allegation of researching in Aklan Catholic College.

5. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; UNIFORM RULES; LOAFING CLASSIFIED AS GRAVE OFFENSE. — Section 52 (A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936 classifies loafing or frequent unauthorized absences from duty during regular office hours as a grave offense, punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.

6. ID.; ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCE; CASE AT BAR. — Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed. Section 54(a), Rule IV of the Uniform Rules provides that when applicable, "[t]he minimum of the penalty

> shall be imposed where only mitigating and no aggravating circumstances are present." Thus, we agree with the OCA's recommendation, to consider respondent's length of service in the government as a mitigating circumstance and accordingly impose the minimum penalty for loafing or frequent unauthorized absences from duty during regular office hours.

D E C I S I O N

PUNO, *C.J.*:

This is an administrative complaint against respondent, Pearl Marie N. Icamina, Legal Researcher of Branch 8, Regional Trial Court (RTC) of Kalibo, Aklan, for loafing or frequent unauthorized absences from duty during regular office hours.

From July 2001 to October 2002, Judge Eustaquio G. Terencio, Presiding Judge of Branch 8, RTC of Kalibo, Aklan issued several memoranda, directing respondent to make a statement of facts in cases pending before the trial court.[1]

On June 24, 2003, Executive Judge Marietta J. Homena-Valencia issued a memorandum directing all branch clerks of court to monitor personnel, to address complaints regarding the practice of some employees of leaving after logging in the morning and returning in time to log out.[2]

In a memorandum dated July 14, 2003, complainant, Atty. Rhea Vidal-Ibarreta, Clerk of Court V, Branch 8, RTC of Kalibo, Aklan, directed respondent to seek permission from herself or the presiding judge upon leaving the office during office hours for personal errands.[3]

On July 15, 2003, Judge Terencio issued a memorandum to the security guards manning the doors of the Hall of Justice of

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[1] Investigation Report of Executive Judge Sheila Martelino-Cortes, dated December 27, 2007, p. 3.

[2] Exhibit "S", folder of exhibits.

[3] Exhibit "T", folder of exhibits.

the RTC of Kalibo, Aklan to monitor the arrival and departure of his personnel after having logged in.[4]

In a letter-complaint dated July 16, 2004, complainant charged respondent with habitual tardiness and loafing or frequent unauthorized absences from duty during regular office hours before the Office of the Court Administrator (OCA).[5]

In another letter-complaint dated April 26, 2005, complainant brought to the attention of the OCA the regular, unexplained, and unauthorized absences of respondent from the office premises during office hours from the period of January 2005 to the date of the complaint.[6] Complainant attached certified photocopies of logbook entries maintained by the security guards manning the doors of the Hall of Justice of the RTC of Kalibo, Aklan.[7]

On June 20, 2005, respondent submitted her Comment, alleging that she was singled out, because no entries for other court personnel were made in the logbook.[8] She admitted going out of the office to have her *merienda*, a privilege given to all employees.

On March 13, 2006, the Court resolved to redocket the informal preliminary inquiry as a regular administrative matter and referred the matter to the Executive Judge of Kalibo, Aklan for investigation, report, and recommendation.[9]

During the investigation, complainant alleged that respondent regularly went out of the office during office hours, and she made several reminders to the respondent to minimize going out during office hours.[10] Complainant further alleged that when these verbal reminders proved ineffective, Judge Terencio issued memoranda

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[4] Exhibit "Q", folder of exhibits.

[5] Exhibit "V", folder of exhibits.

[6] *Rollo*, p. 1.

[7] *Id.* at 3-7.

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

[9] *Id.* at 33.

[10] Investigation Report, *supra* note 1.

from July 2001 to October 2002 directing respondent to complete a statement of facts in cases pending before Branch 8.[11]

Respondent admitted that she went home during office hours for personal errands.[12] Respondent presented evidence to prove that her research work required her to go outside of Branch 8, RTC Kalibo, Aklan to the RTC and Integrated Bar of the Philippines (IBP) libraries, both located inside the Hall of Justice.[13] Respondent further alleged that when the information she needed was not available in these libraries, she had to go out of court premises to the library of Aklan Catholic College.[14]

In her Report dated December 27, 2007, Executive Judge Sheila Martelino-Cortes made the following findings:

> On the issue of respondent's frequent going out of the office premises in the morning and afternoon, complainant's evidence was able to establish that from the log book of the security guards who were directed to write down the going out and return of Branch 8 personnel (Exhibit "R"), the respondent's going out and coming in the office after timing in the bundy clock was religiously recorded from July 15, 2003 to August 15, 2006. An assiduous examination of the log book showed that almost every office day, respondent Pearl Marie Icamina was going out of the office both mornings and afternoons. On the first month of July, 2003, she would check out and return after only a few minutes, not exceeding one hour. However, on the succeeding days, after July 2003, she would check out for more than 30 minutes and there were times when she would check out three times in the afternoon so there were frequent and almost daily excursions out of the office. There were times when she was going out at 1:00 or 2:00 in the afternoon to return one or two hours later.
>
> The respondent presented evidence to prove that most of the time she was either in the RTC library or IBP library. But these libraries are situated inside the RTC building and one does not go out of the

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[11] *Id.*

[12] *Id.* at 7.

[13] *Id.* at 6.

[14] *Id.* at 6-7.

front door where the security guards keep watch. Her frequent going out had nothing to do with research work. On the allegation that she would research in the Aklan Catholic College library, no evidence was presented to prove that and that library does not have the facilities and materials for good research.[15]

The investigating judge recommended that pursuant to Rule IV, Section 52, No. 17 of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules), respondent should be administratively liable for frequent unauthorized absences during office hours. Considering that respondent has been in the service for almost twenty (20) years, the investigating judge recommended this to be appreciated as a mitigating circumstance and that the corresponding penalty be lowered to a suspension of two (2) months.[16]

In a Memorandum dated April 24, 2008, the OCA adopted the findings of the investigating judge and noted the following:

It was established that respondent frequently went out of the office premises in the morning and afternoon. This was bolstered by the entries in the log book of the security guards who were directed to write down the name of the employees of Branch 8 as well as the corresponding time when they leave from and return to the office premises. An examination of the log book would reveal that almost everyday, respondent went out of the office both in the morning and in the afternoon. Respondent's claim that she had to go the RTC and the IBP library deserves scant consideration. It bears emphasis that these libraries are situated inside the RTC building and anyone who wishes to go to the said libraries need not go out of the front door where the security guards keep watch. Anent the allegation that she went to the Aklan Catholic College library, no evidence was presented to prove that effect aside from the fact that most of the law students of the said school utilize the RTC library since the law books in the aforesaid college are already obsolete.

The OCA agreed with the investigating judge that pursuant to Section 52 of the Uniform Rules, respondent should be held administratively liable for frequent unauthorized absences during

[15] *Id.* at 9.

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

office hours. However, the OCA recommended a penalty of suspension for six (6) months and one (1) day. The OCA considered respondent's length of service of almost twenty (20) years as a mitigating circumstance, recommending the minimum penalty for frequent unauthorized absences from duty during office hours.

The Court agrees with the foregoing findings and the OCA's recommendation.

Pursuant to the constitutional mandate that public office is a public trust,[17] court personnel must observe the prescribed office hours and use this time efficiently for public service, "if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary."[18] It is for this reason that Administrative Circular No. 2-99 provides:

> I. Accordingly, all courts, must observe the following office hours, without, however, prejudice to the approved flexi-time of certain personnel;
>
> MONDAY TO FRIDAY
>
> 8:00 A.M. to 12:00 N
> 1:00 P.M. to 5:00 P.M.[19]

Section 1, Canon IV of the Code of Conduct for Court Personnel reiterates the commitment required in the performance of official duties:

> SECTION 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Court personnel must devote every moment of official time to public service.[20] The conduct and behavior of court personnel

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[17] CONSTITUTION, Art. XI, Sec. 1.

[18] Administrative Circular No. 2-99, January 15, 1999.

[19] *Id*.

[20] *Anonymous v. Grande*, A.M. No. P-06-2114, December 5, 2006, 509 SCRA 495, 501.

should be circumscribed with a high degree of professionalism and responsibility, because the image of a court of justice necessarily mirrors the conduct of court officials and employees.[21] Thus, court personnel must strictly observe official time to inspire public respect for the justice system.[22] Loafing or frequent unauthorized absences from duty during regular office hours results in inefficiency, dereliction of duty, and adversely affects the prompt delivery of justice.[23]

The charge of loafing or frequent unauthorized absences from duty during regular office hours was proven by substantial evidence.[24] Frequent connotes that "the employees absent themselves from duty more than once."[25] The logbook entries maintained by the security guards manning the Hall of Justice reveal the frequency of respondent's loafing. The entries show that from July 15, 2003 to August 15, 2006, respondent left the Hall of Justice in the mornings and afternoons almost daily. The investigating judge found that respondent's excursions lasted from 30 minutes to two (2) hours, and "there were times when she would check out three times in the afternoon."[26]

Moreover, respondent committed these acts without authority. Complainant issued a memorandum, directing respondent to seek permission from herself or the presiding judge for permission to leave the office during office hours. Respondent did not comply with complainant's instructions.

We find respondent's explanation unsatisfactory, because she failed to refute the accusations made against her. Respondent

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[21] *Lopena v. Saloma*, A.M. No. P-06-2280, January 31, 2008.

[22] *Id*.

[23] *Anonymous v. Grande*, *supra* note 20.

[24] *Mendoza v. Buo-Rivera*, A.M. No. P-04-1784, April 28, 2004, 428 SCRA 72, 76.

[25] *Grutas v. Madolaria*, A.M. No. P-06-2142, April 16, 2008; *Lopena v. Saloma*, *supra* note 21; *Office of the Court Administrator v. Mallare*, A.M. No. P-01-1521, November 11, 2003, 415 SCRA 368, 375.

[26] Investigation Report, *supra* note 1, at 9.

admitted that she went home during office hours for personal errands. Respondent's justification for her time outside the office, that she was completing research in the RTC, IBP, or Aklan Catholic College libraries, has no merit. As the RTC and IBP libraries are inside the Hall of Justice, respondent had no reason to leave court premises during office hours. Respondent did not present evidence to support her allegation of researching in Aklan Catholic College.

Section 52 (A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936 classifies loafing or frequent unauthorized absences from duty during regular office hours as a grave offense, punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed. Section 54(a), Rule IV of the Uniform Rules provides that when applicable, "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Thus, we agree with the OCA's recommendation, to consider respondent's length of service in the government as a mitigating circumstance and accordingly impose the minimum penalty for loafing or frequent unauthorized absences from duty during regular office hours.

IN VIEW WHEREOF, Pearl Marie N. Icamina, Legal Researcher of Branch 8, Regional Trial Court, Kalibo, Aklan, is found *GUILTY* of loafing or frequent unauthorized absences from duty during regular office hours and is hereby *SUSPENDED* for a period of six (6) months and one (1) day without pay, with *WARNING* that subsequent like infractions shall be dealt with more severely.

SO ORDERED.

Carpio, Azcuna, Reyes,[*] and *Leonardo-de Castro, JJ.*, concur.

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[*] Per Special Order No. 520, dated September 19, 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Ruben T. Reyes to replace Associate Justice Renato C. Corona, who is on official leave.

SECOND DIVISION

[G.R. No. 142977. September 30, 2008]

LEONOR CAMCAM, JOSE, FORTUNATO, VIRGINIA, GLORIA, FLORENDO, DELFIN, RODRIGO, LEUTERIO, NARCISO, ONOFRE, ZENAIDA, AURELIA, TEOFILA, FELICIDAD, MERCEDES, LYDIA, ALFREDO, BIENVENIDO, EFREN, LILIA, ERLINDA, MELINDA, MARYLOU, MERIAM, all surnamed SALVADOR, *petitioners, vs.* **HONORABLE COURT OF APPEALS and ARCADIO FRIAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PHYSICAL EVIDENCE; DEED OF SALE; IRREGULAR NOTARIZATION; VALIDITY OF CONTRACT, NOT NECESSSARILY AFFECTED. — Without passing on the merits of Frias' claim that Leonor originally sold to him ½ of Lot No. 18739 as reflected in the first November 4, 1982 document but later conveyed the remaining ½ thereof, hence, the execution of the second document bearing the same date, an irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence. The irregular notarization— or, for that matter, the lack of notarization — does not thus necessarily affect the validity of the contract reflected in the document. *Tigno v. Aquino* enlightens: x x x [F]rom a civil law perspective, the absence of notarization of the Deed of Sale would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or enforceability of the transaction, but required merely for convenience. We have even affirmed that a sale of real property though not

consigned in a public instrument or formal writing, is nevertheless valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces effects between the parties."

2. ID.; ID.; BURDEN OF PROOF; ALLEGATION OF FRAUD ON THE PART OF RESPONDENT; FAILURE TO DISCHARGE BURDEN. — Petitioners alleged fraud on Frias' part, hence, they had the burden of establishing the same by clear and convincing evidence. This they failed to discharge. By Leonor's account, she signed the three documents relying on Frias' word that they were deeds of "mortgage", and she did not read them because she "[did] not know how to read." When asked, however, on cross-examination about her educational attainment, Leonor answered that she finished the third year of a nursing course at San Juan de Dios Hospital. Clarifying her statement that she did not know how to read, Leonor explained that she knew how to read but her eyesight was blurred. Leonor's granddaughter-witness Gertrudes Calpo (Gertrudes) who signed as witness in Exhibit "B"/"1" declared, however, that she read the contents of Exhibit "B"/"1" to Leonor, thus belying petitioners' claim that Leonor signed the same without knowing its true contents. As for Exhibit "A"/"3" which petitioners maintain is spurious, Leonor's signature therein being allegedly forged, Leonor herself admitted having signed the same, and this was corroborated by Gertrudes.

3. ID.; CIVIL PROCEDURE; THEORY OF CASE; CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — As for Leonor's co-petitioners' invocation of their right of redemption of the share of Leonor in the lots sold to Frias, points of law, theories, issues of fact, and arguments not brought to the attention of the trial court ordinarily are not considered by a reviewing court as they cannot be raised for the first time on appeal.

4. CIVIL LAW; LACHES, DOCTRINE THEREOF APPLICABLE IN CASE AT BAR. — Besides, given that petitioners already knew of the sale as early as 1983, they are guilty of laches, having raised their right of redemption for the first time in 2000 when they filed the present petition.

5. ID.; SPECIAL CONTRACTS; SALES; RIGHT TO REPURCHASE; VALID TENDER OF THE ENTIRE REPURCHASE PRICE

REQUIRED FOR EXERCISE OF RIGHT OF REDEMPTION. — AT ALL EVENTS, even assuming that the invocation by Leonor's co-petitioners of their right of redemption was timely made, it cannot be considered a valid exercise thereof as it was not accompanied by a reasonable and valid tender of the entire repurchase price.

APPEARANCES OF COUNSEL

Eufrocino L. Bermudez for petitioners.

De Guzman Imus Bautista Cayago Reyes Diga & Associates Law Firm for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Leonor Camcam (Leonor) and her husband Laureano Salvador (Laureano) were the registered owners of two parcels of land, Lot Nos. 19554 and 18738 of the Cadastral Survey of San Carlos, Pangasinan, located in the Barrio of Basista, San Carlos, Pangasinan.

Laureano died intestate on December 9, 1941. He was survived by his wife-petitioner Leonor; his brothers Agapito and petitioners Jose and Fortunato, all surnamed Salvador; and the heirs of his deceased brother Luis Salvador (Luis), namely, petitioners Virginia, Gloria, Florendo, Delfin, Rodrigo, Eleuterio, Narciso, Onofre, Zenaida, and Aurelia, all surnamed Salvador.

On February 9, 1983, Leonor, together with her brothers-in-law Agapito, Jose, Fortunato, and Luis' heirs, filed before the Regional Trial Court of San Carlos City, Pangasinan a Complaint,[1] docketed as Civil Case No. SCC-833, against respondent Arcadio Frias (Frias), for annulment of the following documents executed by Leonor in Frias' favor covering Lot Nos. 19554 and 18738:

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[1] Records, Vol. I, pp. 1-9.

1. November 4, 1982 Deed of Adjudication with Sale of the *entire Lot No. 19554 and ½ of Lot No. 18738*, for a ₱11,000 consideration signed by Leonor (Exhibit "B"/"1");[2]

2. November 4, 1982 Deed of Extra-Judicial Partition and Sale of "*ONE-HALF (½) portion EACH [of the two lots] together with [Leonor's] conjugal share of ONE-HALF (½) EACH of the [two lots]* with all the improvements thereon" for a ₱45,000 consideration, signed by Leonor (Exhibit "A"/"3");[3] and

3. November 23, 1982 Deed of Absolute Sale of the *other half of Lot No. 18738*, for a consideration of ₱3,000, signed by Leonor (Exhibit "C"/"2").[4]

Before the trial court, petitioners advanced the following version of the case:

In November 1982, Frias offered to purchase the two lots from Leonor. Leonor, however, was only willing to enter into a sale with right of repurchase within five years. Frias agreed to Leonor's condition but he deceived her into signing the Deed of Adjudication-Exhibit "B"/"1", after which he paid her ₱9,000 out of the ₱11,000 consideration, he promising that he would settle the balance of ₱2,000 before the end of the month.

In the latter part of November 1982, Frias, instead of delivering the balance of ₱2,000, again deceived Leonor into signing another document, the Deed of Absolute Sale-Exhibit "C"/"2", he telling her that since two lots were involved, she had to sign another instrument pertaining to the other lot.

Upon verification with Rodolfo Acosta (Acosta), the notary public who notarized Exhibits "B"/"1" and "C"/"2", petitioners discovered that the deeds Leonor signed transferred ownership of the entire area covering the two lots. They also, upon inquiry with the Register of Deeds at Lingayen, discovered that Original

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[2] *Id.* at 178.

[3] *Id.* at 177.

[4] *Id.* at 179.

Certificate of Title Nos. 11634[5] and 12027[6] in the name of Leonor and her husband covering the two lots were cancelled and Transfer Certificate of Title Nos. 143752[7] and 143753[8] were in their stead issued in Frias' name. Further, they discovered that Frias registered the document-Exhibit "A"/"3", which had the same date and notarial details as those of Exhibit "B"/"1".

Petitioners alleged that assuming that the documents are valid, it is void with respect to the shares of Leonor's co-heirs-co-petitioners as they were conveyed without their knowledge and participation.

They thus prayed for judgment

(1) Declaring null and void, the **Deed of Adjudication with Sale dated November 4, 1982** [Exhibit "B"/"1"], and the **Deed of Absolute Sale dated November 23, 1982** [Exhibit "C"/"2"] on the ground that the said documents did not reflect the true intention of the parties x x x, moreover, the shares of the plaintiffs, other than plaintiff Camcam, were included without their knowledge, participation and consent x x x;

(2) Declaring null and void, the **Deed of Extrajudicial Partition and Sale dated November 4, 1982** [Exhibit "A"/"3"] based on the fact that it is absolutely fictitious and simulated x x x;

(3) That as a consequence of the nullity of [Exhibit "A"/"3"], TCT Nos. 143752 and 143753 be declared null and void and ordering the Register of Deeds of Lingayen, Pangasinan to cancel said transfer certificates of titles issued in the name of defendant Frias and the annotations on OCT Nos. 11634 and 12027 relative to the cancellation be cancelled; or, in the alternative, the defendant Frias x x x be ordered to execute a deed of reconveyance over the parcels subject of this suit in favor of the plaintiffs, in the following proportion, to wit: one half (½) to plaintiff Camcam, and

[5] Exhibit "4".

[6] Exhibit "5".

[7] Exhibit "6".

[8] Exhibit "7".

the other half shall pertain to the other plaintiffs, namely, Agapito, Jose, Fortunato and the heirs of the late Luis, all surnamed Salvador, in equal proportion;

(4) Declaring plaintiffs Agapito, Jose, Fortunato, and the late Luis, all surnamed Salvador, the latter being represented in this suit by his heirs, as the only legitimate heirs to inherit the estate of their deceased brother, Laureano Salvador who died on December 9, 1941, thereby excluding the widow from participating x x x;

(5) Declaring the defendant liable for actual, compensatory and moral damages to plaintiffs and litigation expenses, assessable in terms of money in such amount as will be proved in court, and to pay exemplary damages as may be assessed by the court;

(6) Declaring the defendant liable for the attorney's fees in the amount of ₱10,000.00 and to pay the costs.[9] (Emphasis and underscoring supplied)

They likewise prayed for other just and equitable reliefs.[10]

Upon the other hand, Frias advanced the following version:

Leonor inherited the two lots, to the exclusion of her co-petitioners, under the old Civil Code[11] and it was she who convinced him to buy them.

Leonor later changed her mind and was willing to sell only the whole of the residential land, Lot No. 19554, and ½ of the mango and coconut land, Lot No. 18739,[12] as she was giving her brothers-in-law two weeks to buy the ½ remaining portion thereof,[13] hence, he and Leonor forged Exhibit "B"/"1". Leonor later informed him that her brothers-in-law could not buy the

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

[10] *Ibid.*

[11] *Id.* at 18.

[12] TSN, October 23, 1986, pp. 12-13.

[13] *Id.* at 13, 16-17.

remaining ½ portion of Lot No. 18739, hence, he and Leonor forged Exhibit "C"/"2".[14]

After the execution of the two documents dated November 4, 1982, Frias brought them to the Municipal Building to pay taxes. When asked by an employee of the then-Ministry of Agrarian Reform how much he paid for the lots, Frias confessed to not having indicated the correct consideration on the documents because he wanted to "escape" paying taxes such as capital gains taxes. On being informed of the consequences of not reflecting the true consideration of the two lots in the documents, he had the third document, Exhibit "A"/"3", prepared which, after explaining to Leonor the reason beyond the necessity therefor, she signed in notary public Acosta's office.[15]

During the pendency of the proceedings before the trial court, Leonor's brother-in-law Agapito died and was substituted by his heirs, namely petitioners Teofila, Felicidad, Mercedes, Lydia, Alfredo, Bienvenido, Efren, Lilia, Erlinda, Melinda, Marylou, and Meriam, all surnamed Salvador.[16]

By Decision[17] of December 12, 1990, Branch 57 of the Pangasinan RTC, holding that:

x x x x x x x x x

We cannot agree that Leonor Camcam signed [these] document[s] without reading them. She signed [them] and read [them] because she was one who had enough learning. x x x Besides that, Evangeline Pira, and Gertrudes Calpo signed it themselves as [witnesses according to] the testimony of Atty. Rodolfo Acosta.

x x x x x x x x x

But this is **true only with regards to ½ of the properties as [they are] conjugal in nature**. As regards x x x **the other half of**

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[14] *Id.* at 17-19.

[15] *Id.* at 21-27.

[16] Records, pp. 202-205.

[17] *Id.* at 329-332.

the property the rights of inheritance by x x x brothers and sisters under the old law is provided thus:

> Article 948. If there are brothers and sisters and nephews, who are children of brothers and sisters of the whole blood, the former shall inherit per capita, and the latter per stirpes.
>
> Article 953. In case there are brothers or sisters or children of brothers or sisters, the widow or widower shall have a right to receive, in concurrence with the former, the portion of the inheritance in usufruct granted him or her in Article 837.
>
> Article 837. When the testator leaves no legitimate descendants or ascendants, the surviving spouse shall be entitled to one-half of the inheritance also in usufruct[18] (The old civil code) (Emphasis and underscoring supplied),

disposed as follows:

> WHEREFORE **the other half [of the two lots]** should be divided among the brothers and sisters and nephews and nieces by the right of intestate succession; to brothers and sisters, per capita; and the nephews and nieces per stirpes; of one-half of the property. **The remaining one-half belong[s] to defendant [herein-respondent Frias]**.
>
> Ordering the Register of Deeds of Lingayen, Pangasinan to cancel TCT No. 143752 and 143753 and instead issue another title, one half of the property to the brothers and sisters, per capita; and to the nieces and nephews per stirpes; the other half to the defendants.[19] (Emphasis and underscoring supplied)

On appeal,[20] the Court of Appeals, by Decision[21] of April 30, 1992, affirmed with modification the trial court's decision. Thus it disposed:

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[18] *Id.* at 331.

[19] *Id.* at 331-332.

[20] *Id.* at 337.

[21] Penned by Court of Appeals Associate Justice Jainal D. Rasul, with the concurrence of Associate Justices Santiago M. Kapunan and Oscar M. Herrera. CA *rollo*, pp. 49-unnumbered page before p. 50.

WHEREFORE, in view of the foregoing, the decision of the lower court dated December 12, 1990 is hereby AFFIRMED with MODIFICATION. One-half of the properties in question belong to defendant-appellee Arcadio Frias, by virtue of the valid sale by Leonor Camcam. The other half should be divided among the brothers, nephews and nieces of the late Laureano Salvador by right of intestate succession: to brothers per capita and to the nephews and nieces per stirpes.

THE Register of Deeds of Lingayen, Pangasinan is directed to cancel TCT Nos. 143752 and 143753 and issue the corresponding titles in accordance with the above pronouncement. The expenses of the survey should be borne equally by plaintiffs-appellants and defendant-appellee. Costs against plaintiffs-appellants.[22] (Underscoring supplied)

Their Motion for Reconsideration[23] having been denied,[24] petitioners filed the present Petition for Review on *Certiorari*,[25] faulting the appellate court

1. . . . IN NOT DECLARING NULL AND VOID THE THREE (3) DEEDS X X X CONSIDERING THEIR PHYSICAL APPEARANCE AND CONDITIONS INDICATING STRONGLY THE IRREGULARITIES OF THEIR EXECUTION.

2. [IN NOT DECLARING THAT] THE SALES WERE ILLEGAL, CONSIDERING THE OTHER PETITIONERS [,] BEING OWNERS OF THE OTHER HALF, HAVE THE PREFERENTIAL RIGHT TO PURCHASE THAT HALF PORTION INSTEAD OF PRIVATE RESPONDENT.[26]

Petitioners contend as follows:

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[22] Pp. 5-6 of CA decision.

[23] CA *rollo*, pp. 50-56.

[24] Resolution of April 18, 2000 penned by then-Court of Appeals Associate Justice Romeo J. Callejo, Jr. with the concurrence of then-Court of Appeals Associate Justice Cancio C. Garcia and Associate Justice Martin S. Villarama, Jr. *Id.* at 62.

[25] *Rollo*, pp. 3-13.

[26] *Id.* at 6-7.

x x x x x x x x x

From the appearance of these documents, particularly the Deed of Extrajudicial Partition and Sale (Annex "A" or Exh. "A"/"3") and the Deed of Adjudication with Sale (Annex "B" or Exh. "B"/"1"), while both were notarized by the same notary public, yet they have identical notarial documentary identification, *i.e.*, the same documentary number to be 464, same page number 44, the same book number X and the same series of 1982, and appeared to have been "sworn" before the notary public on the same date — November 4, 1982.

x x x x x x x x x

Aside from the anomalous situation created by the irregularly executed deeds and advantageously employed by the private respondent, in order to conceal the apparent irregularities, the private respondent claimed that the Deed of Partition and Sale (Annex "A" or Exh "A"/"3") dated November 4, 1982, was a consolidation deed of the Deed of Adjudication with Sale dated November 4, 1982 (Annex "B" or Exh. "B"/"1") and the Deed of Absolute Sale dated November 23, 1982 (Annex "C" or Exh "C"/"2"). However, summing up the consideration stated in Annex "B" of ₱11,000.00 and the consideration stated in Annex "C" of ₱3,000.00, the total will naturally be ₱14,000.00, but the alleged [consolidation] deed (Annex "A" or Exh "A"/"3") shows the consideration is not ₱14,000.00 but ₱45,000.00.[27]

x x x x x x x x x

Assuming, without admitting, that petitioner Leonor Camcam regularly sold her one-half portion in the two parcels of land in favor of private respondent Arcadio Frias, however, considering the preferential right of the other petitioners, who are admittedly the owners of the other half portion in said parcels of land, and considering further the attendant circumstances of this case, as discussed above, the petitioners, with the exception of petitioner Leonor Camcam, should be allowed to jointly exercise their right of redemption, the consideration of which shall proportionately be based on that Deed (Annex "B" or Exh. "B"/"1") which was published in the newspaper.[28] (Underscoring supplied)

The petition is bereft of merit.

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[27] *Id.* at 8-9.

[28] *Id.* at 12.

Without passing on the merits of Frias' claim that Leonor originally sold to him ½ of Lot No. 18739 as reflected in the first November 4, 1982 document but later conveyed the remaining ½ thereof, hence, the execution of the second document bearing the same date, an irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.[29] The irregular notarization — or, for that matter, the lack of notarization — does not thus necessarily affect the validity of the contract reflected in the document. *Tigno v. Aquino*[30] enlightens:

> x x x [F]rom a civil law perspective, the absence of notarization of the *Deed of Sale* would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or enforceability of the transaction, but required merely for convenience. We have even affirmed that a sale of real property though not consigned in a public instrument or formal writing, is nevertheless valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces effects between the parties.[31] (Underscoring supplied)

Petitioners alleged fraud on Frias' part, hence, they had the burden of establishing the same by clear and convincing evidence.[32] This they failed to discharge.

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[29] RULES OF COURT, Rule 132, Section 20; Vide *Soriano v. Basco*, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 430.

[30] G.R. No. 129416, November 25, 2004, 444 SCRA 61.

[31] *Id.* at 76. Citing *Agasen v. Court of Appeals*, 382 Phil. 391, 401 (2000); *Tapec v. Court of Appeals*, G.R. No. 111952, October 26, 1994, 237 SCRA 749, 758-759; *Republic v. Sandiganbayan*, G.R. Nos. 108292, 108368, 108548-48, 108550, September 10, 1993, 226 SCRA 314, 322-323; *Bucton v. Gabar*, 154 Phil. 447, 453 (1974); *Hawaiian Philippine Co. v. Hernaez*, 45 Phil. 746, 749 (1924).

[32] *Vide Republic v. Guerrero*, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 438; *Sps. Morandarte v. Court of Appeals*, 479 Phil. 870, 882-883 (2004).

By Leonor's account, she signed the three documents relying on Frias' word that they were deeds of "mortgage," and she did not read them because she "[did] not know how to read,"[33] When asked, however, on cross-examination about her educational attainment, Leonor answered that she finished the third year of a nursing course at San Juan de Dios Hospital.[34]

Clarifying her statement that she did not know how to read, Leonor explained that she knew how to read but her eyesight was blurred.[35] Leonor's granddaughter-witness Gertrudes Calpo (Gertrudes) who signed as witness in Exhibit "B"/"1" declared, however, that she read the contents of Exhibit "B"/"1" to Leonor,[36] thus belying petitioners' claim that Leonor signed the same without knowing its true contents.

As for Exhibit "A"/"3" which petitioners maintain is spurious, Leonor's signature therein being allegedly forged,[37] Leonor herself admitted having signed the same,[38] and this was corroborated by Gertrudes.[39]

As for Leonor's co-petitioners' invocation of their right of redemption of the share of Leonor in the lots sold to Frias, points of law, theories, issues of fact, and arguments not brought to the attention of the trial court ordinarily are not considered by a reviewing court as they cannot be raised for the first time on appeal.[40] Besides, given that petitioners already knew of the sale as early as 1983, they are guilty of laches, having raised their

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[33] TSN, August 23, 1983, p. 13.

[34] TSN, January 25, 1984, p. 13-14.

[35] *Id.* at 8.

[36] TSN, August 8, 1985, pp. 14-16.

[37] Records, p. 6.

[38] TSN, August 23, 1983, pp. 25-27.

[39] TSN, August 8, 1985, p. 75.

[40] *Vide Santos v. Intermediate Appellate Court*, G.R. No. 74243, November 14, 1986, 145 SCRA 592, 595.

right of redemption for the first time in 2000 when they filed the present petition.[41]

AT ALL EVENTS, even assuming that the invocation by Leonor's co-petitioners of their right of redemption was timely made, it cannot be considered a valid exercise thereof as it was not accompanied by a reasonable and valid tender of the entire repurchase price.[42]

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 148433. September 30, 2008]

ZAMBOANGA BARTER TRADERS KILUSANG BAYAN, INC. represented by its President, ATTY. HASAN G. ALAM, *petitioner, vs.* **HON. JULIUS RHETT J. PLAGATA, in his capacity as Executive Labor Arbiter of NLRC-RAB No. IX, SHERIFF DANILO P. TEJADA of NLRC-RAB No. IX and TEOPISTO MENDOZA,** *respondents.*

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[41] *Vide Aguilar v. Aguilar,* G.R. No. 141613, December 16, 2005, 478 SCRA 187, 192-194; records, pp. 1-9; CA *rollo,* pp. 13-35.

[42] *Vide Villegas v. Court of Appeals*, G.R. Nos. 111495 and 122404, August 18, 2006, 499 SCRA 276, 297-300.

SYLLABUS

1. CIVIL LAW; CONTRACTS; INTERPRETATION OF; THERE BEING NOTHING AMBIGUOUS IN THE CONTENTS OF THE DOCUMENT, THERE IS NO ROOM FOR INTERPRETATION BUT ONLY SIMPLE APPLICATION THEREOF. —It is clear from condition number 4 that the property donated to the Republic, in the event that barter trading was phased out, prohibited or suspended for more than one year in Zamboanga City, shall revert to the donor without need of any further formality or documentation. Effective 1 October 1988, per Memorandum Circular No. 1 of the Office of the President dated 17 June 1988, barter trade in Zamboanga City was totally phased out. Following the condition contained in the Deed of Donation, the donated **land shall revert to the petitioner without further formality or documentation.** It follows that upon the phase-out of barter trade, petitioner again became the owner of the subject land. As found by the Court of Appeals, Atty. Hasan G. Alam subscribed to the legal reality that ZBTKBI was the owner of the subject land when he wrote Lt. Gen. Ruperto A. Ambil, Jr. of the Southern Command on 6 February 1996, requesting the return of the original TCT covering the property. Thus, when the property was levied and sold on 1 March 1990 and 13 June 1990, respectively, it was already petitioner that owned the same. It should be clear that **reversion applied only to the land and not to the building and improvements made by the Republic on the land worth ₱5,000,000.00.** Petitioner further claims that the Court of Appeals erred in ruling that there was automatic reversion of the land, because it put the Republic in a disadvantageous situation when it had a ₱5 million building on a land owned by another. This claim is untenable. The Court of Appeals merely enforced or applied the conditions contained in the deed of donation. The Republic accepted the donation subject to conditions imposed by the donor. In condition number 4, the Republic is given the right to sell the building it constructed on the land and the improvements thereon. If ever such condition is disadvantageous to the Republic, there is nothing that can be done about it, since it is one of the conditions that are contained in the donation which it accepted. There being nothing ambiguous in the contents of the document, there is no room for interpretation but only simple application thereof.

2. ID.; ID.; ID.; STIPULATION THAT ALLOWS AUTOMATIC REVERSION, NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY. — Petitioner's statement that neither party to the donation has expressly rescinded the contract is flawed. As above ruled, the deed of donation contains a stipulation that allows automatic reversion. Such stipulation, not being contrary to law, morals, good customs, public order or public policy, is valid and binding on the parties to the donation. As held in *Dolar v. Barangay Lublub (Now P.D. Monfort North), Municipality of Dumangas,* citing *Roman Catholic Archbishop of Manila v. Court of Appeals:* The rationale for the foregoing is that in contracts providing for automatic revocation, judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper. When a deed of donation, x x x expressly provides for automatic revocation and reversion of the property donated, the rules on contract and the general rules on prescription should apply, and not Article 764 of the Civil Code. Since Article 1306 of said Code authorizes the parties to a contract to establish such stipulations, x x x not contrary to law, x x x public order or public policy, we are of the opinion that, at the very least, that stipulation of the parties providing for automatic revocation of the deed of donation, without prior judicial action for that purpose, is valid subject to the determination of the propriety of the rescission sought. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not in itself the revocatory act.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION BY MOTION OR BY INDEPENDENT ACTION; EXPLAINED. — Section 6 of Rule 39 of the Rules of Court provides: Sec. 6. *Execution by motion or by independent action.* — A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The purpose of the law (or rule) in prescribing time limitations for enforcing judgments or action is to prevent obligors from sleeping on their rights.

It is clear from the above rule that a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. If the prevailing party fails to have the decision enforced by a mere motion after the lapse of five years from the date of its entry (or from the date it becomes final and executory), the said judgment is reduced to a mere right of action in favor of the person whom it favors and must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form. However, there are instances in which this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. In *Lancita v. Magbanua*, the Court declared: In computing the time limited for suing out an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. *Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued* without *scire facias*. In *Republic v. Court of Appeals*, we ruled: To be sure, there had been many instances where this Court allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: the *delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*. In *Gonzales v. Court of Appeals*, we emphasized that if the delays were through no fault of the prevailing party, the same should not be included in computing the 5-year period to execute a judgment by motion.

4. ID.; ID.; ID.; ID.; IN CASE AT BAR, THE DELAY IN THE ENFORCEMENT OF THE TWO WRITS WAS CLEARLY CAUSED BY PETITIONER. — It cannot be disputed that Mendoza had not slept on his rights. In fact, he filed three motions so that the judgment in his favor could be executed and satisfied. The judgment was satisfied by virtue of the second alias writ of execution, which was issued upon a motion filed beyond the five-year period. The satisfaction of the judgment was not successful during the first two writs of execution. The delay in the enforcement of the two writs was clearly caused

by petitioner through its President, Atty. Alam. Said delay was indeed beneficial and advantageous to petitioner, because the judgment against it, at that time, was yet to be implemented. It is very clear that if not for the threats received by the sheriff tasked to implement the writs of execution, the satisfaction of judgment would not have been delayed. Under the circumstances obtaining, we hold that the five-year period allowed for enforcement of a judgment by motion was deemed to have been interrupted by petitioner. The prevention of the satisfaction of the judgment on the first two writs of execution cannot be blamed on Mendoza. The satisfaction of the judgment was already beyond his control. He did what he was supposed to do — file the requisite motions so that writs of execution would be issued. In view of the foregoing and for reasons of equity, we deem that the Motion for Issuance of *Alias* Writ of Execution filed by Mendoza on 18 December 1989 has been filed within the five-year period.

5. POLITICAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT BEING THE OWNER OF THE LAND WHEN THE LEVY WAS MADE, THE REPUBLIC NEED NOT HAVE BEEN NOTIFIED ANYMORE. — The arguments advanced by petitioner, which are all premised on the assumption that the Republic was still the owner of the land when the levy was made, have no leg to stand on. As ruled above, the land reverted to petitioner without need of any further formality or documentation when barter trading was phased out in Zamboanga City. Not being the owner of the land when the levy was made, the Republic need not have been notified anymore. It cannot be deprived of a piece of land of which it is no longer the owner. If the Republic is still in possession of the TCT over the subject land, it must surrender the same to the proper authorities. The fact that the Republic is no longer the owner of the subject land does not mean that it no longer owns the buildings, structures and improvements it made and introduced on the subject land. Control and possession over said buildings, structures and improvements shall be returned to the Republic. The Republic, pursuant to condition No. 4 of the Deed of Donation, can sell the buildings, structures and improvements to interested buyers with petitioner being the first in line.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF MONEY JUDGMENTS; SHERIFF CAN

NOT BE FAULTED FOR LEVYING ON SUBJECT LAND. — Can the sheriff be faulted for levying on the subject land? The answer is no. It must be remembered that the sheriff tried to satisfy the money judgment when he went to Atty. Alam, President of ZBTKBI. Instead of cooperating and satisfying the judgment, Atty. Alam did not comply with the money judgment. Instead, he threatened the sheriff, saying that if the latter insisted on enforcing the writ of execution, he should wear an iron dress. The actuation of Atty. Alam was clear defiance of the executory judgment. Petitioner had no intention of satisfying the judgment. Two writs of execution were issued, but they were not satisfied. If petitioner were truly willing to cooperate in the satisfaction of the judgment, the levy of the subject property could have been prevented if only petitioner handed over to, or informed, the sheriff any of its properties sufficient to satisfy the judgment. It did not. Knowing the risk and difficulty of levying on any of the properties of petitioner, the sheriff thus levied upon any property that he could get hold of — the subject property.

7. ID.; ID.; ID.; ID.; RIGHT TO REDEEM; INADEQUACY OF PRICE IS OF NO MOMENT. — It is settled that when there is a right to redeem, inadequacy of price is of no moment, for the reason that the judgment debtor always has the chance to redeem and reacquire the property. In fact, the property may be sold for less than its fair market value, precisely because the lesser the price, the easier for the owner to effect a redemption. In *Hulst v. PR Builders, Inc.*, the Court ruled: [G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption. x x x .

8. ID.; ID.; ID.; ID.; ID.; PETITIONER CANNOT PASS THE BLAME TO OTHERS FOR HAVING FAILED TO EXERCISE ITS RIGHT OF REDEMPTION. — It cannot pass the blame to others for having failed to exercise its right of redemption. Petitioner has no one to blame but its officers who failed to look after its interests and members. It could have redeemed the property but it failed to do so. It is now too late in the day for petitioner, considering that the ownership of the subject property was validly and legally transferred to Teopisto Mendoza when he bought said land at the auction sale without petitioner redeeming the same at the proper time.

APPEARANCES OF COUNSEL

ALCAP Law Offices and *Tendero Mendoza Mabale & Pagteilan Law Offices* for petitioner.

Roland B. Bernardo for private respondent.

The Solicitor General for public respondents.

Amoran Batara for intervenor Canelar.

Juan Climaco P. Elago II for intervenors.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the decision[1] of the Court of Appeals dated 20 November 2000 and its (2) Resolution[2] dated 31 May 2001 denying petitioner's motion for reconsideration. It likewise asks that the second *alias* writ of execution issued by Hon. Julius Rhett J. Plagata, Executive Labor Arbiter of NLRC-RAB IX, be annulled and declared without any legal effect, as well as the ensuing levy, sale on execution of the subject property and the writ of possession all issued and conducted pursuant thereto.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Ramon A. Barcelona and Bienvenido L. Reyes, concurring. CA *rollo*, pp. 193-201.

[2] CA *rollo*, pp. 266-267.

The Court of Appeals dismissed petitioner Zamboanga Barter Traders Kilusang Bayan, Inc.'s (ZBTKBI's)[3] petition for *certiorari*, which assailed public respondent Hon. Julius Rhett J. Plagata's orders dated 5 May 2000 and 7 June 2000 and the 23 May 2000 writ of possession he issued in NLRC Case No. RABIX-0133-81. The order dated 5 May 2000 granted private respondent Teopisto Mendoza's petition for the issuance of a writ of possession over the parcel of land subject of this case. Pursuant to the first order, the writ of possession was issued on 23 May 2000. The second order dated 7 June 2000 denied petitioner's motion for reconsideration of the first order.

The antecedents are as follows:

On 9 January 1973, President Ferdinand E. Marcos issued Presidential Decree No. 93[4] which legalized barter trading in the Sulu Archipelago and adjacent areas, and empowered the Commander of the Southwest Command of the Armed Forces of the Philippines (AFP) to coordinate all activities and to undertake all measures for the implementation of said decree.

On 17 June 1981, ZBTKBI, thru its President, Atty. Hassan G. Alam, and the Republic of the Philippines, represented by Maj. Gen. Delfin C. Castro, Commander, Southern Command of the AFP, and Chairman, Executive Committee for Barter Trade, entered into a Deed of Donation whereby ZBTKBI donated to the Republic a parcel of land covered by Certificate of Title (CTC) No. T-61,628 of the Registry of Deeds of Zamboanga City, identified as Lot No. 6 of consolidation subdivision plan Pcs-09-000184, situated in the Barrio of Canelar, City of Zamboanga, containing an area of thirteen thousand six hundred forty-three (13,643) square meters, more or less.[5] The Republic accepted the donation which contained the following conditions:

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[3] ZBTKBI is a cooperative duly registered with the Cooperative Development Authority on 16 July 1991 with address at Canelar, Zamboanga City. (CA *rollo*, p. 26.)

[4] Establishing Guidelines for Liberalizing Traditional Trade for the Sulu Archipelago and Adjacent Areas.

[5] CA *rollo*, pp. 48-50.

1. That upon the effectivity or acceptance hereof the DONEE shall, thru the authorized agency/ministry, construct a ₱5 Million Barter Trade market building at the afore-described parcel of land;

2. That the aforesaid Barter Trade Market building shall accommodate at least 1,000 stalls, the allocation of which shall be determined by the Executive Committee for Barter Trade in coordination with the Officers and Board of Directors the Zamboanga Barter Traders' Kilusang Bayan, Inc., provided, however, that each member of the DONOR shall be given priority;

3. That the said Barter Trade Market building to be constructed as above-stated, shall be to the strict exclusion of any other building for barter trading in Zamboanga City, Philippines;

4. That in the event barter trading shall be phased out, prohibited, or suspended for more than one (1) year in Zamboanga City, Philippines, the afore-described parcel of land shall revert back to the DONOR without need of any further formality or documentation, and the DONOR shall have the first option to purchase the building and improvements thereon.

5. That the DONEE hereby accepts this donation made in its favor by the DONOR, together with the conditions therein provided.[6]

With the acceptance of the donation, TCT No. T-61,628[7] in the name of ZBTKBI was cancelled and, in lieu thereof, TCT. No. T-66,696[8] covering the same property was issued in the name of the Republic of the Philippines (Republic).

Pursuant to condition No. 1 of the Deed of Donation, the Government and Regional Office No. IX of the Department of Public Works and Highways (DPWH) constructed a Barter Trade Market Building worth ₱5,000,000.00 at the said Lot No. 6. The building was completed on 30 March 1983 and was occupied

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[6] *Id.* at 49.

[7] *Id.* at 51.

[8] *Id.* at 52.

by members of ZBTKBI, as well as by other persons engaged in barter trade.[9]

Prior to said donation, on 16 March 1977, private respondent Teopisto Mendoza (Mendoza) was hired by ZBTKBI as clerk. Subsequently, in a letter dated 1 April 1981, ZBTKBI, through its President, Atty. Hasan G. Alam, informed Mendoza that his services were being terminated on the ground of abandonment of work.[10]

For this reason, Mendoza filed on 29 July 1981 before the Department of Labor Employment (DOLE), Regional Office No. 9, Zamboanga City, a Complaint for Illegal Dismissal with payment of backwages and separation pay. The complaint was docketed as RDO-STF Case No. 473-81. On 23 September 1981, the case was re-docketed as NLRC Case No. RAB IX-0133-81 and assigned to Executive Labor Arbiter Hakim S. Abdulwahid.[11]

On 31 May, 1983, Executive Labor Arbiter Abdulwahid rendered his decision finding the dismissal of Mendoza illegal and ordered ZBTKBI to reinstate Mendoza to his former position or any equivalent position, and to pay him backwages.[12] The decretal portion of the decision reads:

> Wherefore, in view of the foregoing consideration, judgment is hereby rendered, ordering the respondent Zamboanga Barter Traders Kilusang Bayan, Inc. thru its president or authorized representative to reinstate complainant Teopisto Mendoza in his former position or any substantially equivalent position without loss of seniority rights and other privileges and with backwages to be computed at the rate of ₱866.00 a month from April 2, 1981 up to the time he is reinstated.

On 17 June 1983, ZBTKBI filed a Notice of Appeal[13] with the National Labor Relations Commission (NLRC). On 13 July

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[9] *Rollo*, p. 445.

[10] Records, p. 12.

[11] *Id.* at 14.

[12] *Id.* at 80-83.

[13] *Id.* at 89.

1983, Mendoza filed with the NLRC a Manifestation with Motion for Execution praying that petitioner's appeal not be given due course, and that a writ of execution enforcing the decision of the Labor Arbiter be issued.[14]

On 15 November 1983, the NLRC dismissed the appeal for lack of merit.[15] The decision, in part, reads:

> It appears on record that this case had been set for hearing several times but for many occasions, the same had been postponed upon the instance of the respondent. On May 2, 1983, the counsel for the respondent sent a note to the Executive Labor Arbiter requesting the cancellation of the May 2 hearing on the ground that he is no longer the legal counsel of the respondent and that all subsequent notices regarding the instant case should be addressed directly to the respondent. In compliance with the said request, the Executive Labor Arbiter sent a notice of hearing to the respondent advising the latter that the case is set for another hearing on May 30, 1983 at 9:00 a.m. with a warning that no postponement shall be allowed. But despite proper receipt of the notice, respondent deliberately failed to appear. Neither did it submit any position paper or documentary evidence to controvert the claim of the complainant. From the foregoing set of facts, it is clear that the respondent was given all the opportunity to be heard but deliberately chose to ignore the summons and warning of the Executive Labor Arbiter. Respondent is now deemed to have waived all its rights to present evidence and must now suffer the consequences of its own acts. Its claim of lack of due process certainly fails.[16]

On 3 January 1984, counsel for petitioner received a copy of the NLRC decision.[17] There being no appeal therefrom, the decision became final and executory on 18 January 1984.[18]

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[14] *Id.* at 95-97.

[15] *Id.* at 98-99.

[16] *Id.* at 100-101.

[17] *Id.* at 105.

[18] At that time, there was no appellate review from decisions of the NLRC except by Special Civil Action of *Certiorari* under Rule 65. In order to avail of such remedy, a motion for reconsideration was a precondition for any further or subsequent remedy. (*St. Martin Funeral Home v. NLRC*, G.R. No.

On 7 June 1984, the records of the case were returned to Executive Labor Arbiter Abdulwahid.[19]

On 2 July 1984, a Writ of Execution[20] was issued by Executive Labor Arbiter Abdulwahid.[21] Per Sheriff's Return,[22] dated 15 October 1984, the writ of execution was returned unsatisfied.[23] The Sheriff's Return reads:

On October 9, 1984 the undersigned sheriff went to the Office of Zamboanga Barter Traders, Kilusang Bayan, Incorporation at Pitit-Barack in this city to serve the Writ of Execution issued in NLRC Case No. RAB IX-0133-81; entitled *Teopisto Mendoza versus Zamboanga Barter Traders, Kilusang Bayan, Incorporation*. When in the said office I handed the said writ but the personnel refused to receive it. The undersigned proceeded to the Office of Atty. Alam, president of said incorporation accompanied by one of the employee assigned at Pitit-Barack Office, while in the office of the president the undersigned again handed the writ to the secretary of the president and asked her favor to receive the writ. She refused instead, said secretary presented the herein attached Writ of Execution to the president, Atty. Alam. The attention of the undersigned was called to enter the room of the president, without asking any question thrown back to the undersigned the said writ. The undersigned told the president that we are performing our duties and we can not deviate from doing it. Then, **the president repeatedly uttered the statement please informed Atty. Hakim S. Abdulwahid to advise his sheriff when go there to the Zamboanga Barter Traders Store and attach**

130866, 16 September 1998, 295 SCRA 494, 500-501.) In the instant case, there being no motion for reconsideration filed by petitioner, the NLRC decision became final and executory fifteen days after its receipt of the NLRC decision.

[19] Records, p. 107.

[20] *Id.* at 113.

[21] ART. 224. *Execution of decisions, orders or awards*. — (a) The Secretary of Labor, the Commission or any Labor Arbiter or med-arbiter may, **upon his own initiative or on motion** of any interested party, issue a writ of execution requiring the sheriff or a proper officer to execute final decisions, orders or awards of the Commission, the Labor Arbiter, or compulsory arbitrators or voluntary arbitrator. (Labor Code of the Phils.)

[22] NLRC Sheriff Omar S. Alibasa.

[23] Records, p. 114.

the goods there to cloth with an iron shirt. The president also informed the undersigned that the incorporation has no money or saving, even to pay the salary of their employees are not enough. The undersigned has already done his best in order the respondent pay the award to satisfy the judgment in the herein mentioned case but he was threatened.

NOW THEREFORE, in view of the foregoing, the Writ of Execution is hereby returned unsatisfied.[24] (Emphasis supplied.)

On 25 October 1984, Mendoza filed an *Ex Parte* Motion for Issuance of an *Alias* Writ of Execution dated 23 October 1984.[25] An *Alias* Writ of Execution addressed to the Commanding Officer (or his duly authorized representative) of the Philippine Constabulary, Recom IX, Zamboanga City, was issued by Executive Labor Arbiter Abdulwahid on 19 November 1984.[26] Said writ remained unsatisfied.

On 17 June 1988, the Office of the President issued Memorandum Circular No. 1 which totally phased out the Zamboanga City barter trade area effective 1 October 1988.[27]

On 18 December 1989, Mendoza filed a Motion for Issuance of (Second) *Alias* Writ of Execution,[28] which public respondent Executive Labor Arbiter Julius Rhett J. Plagata issued on 2 January 1990.[29] The Second *Alias* Writ of Execution reads in part:

NOW, THEREFORE, you are hereby ordered to go to the premises of the respondent Zamboanga Barter Traders Kilusang Bayan, Inc. located at Canelar, Zamboanga City to reinstate complainant Teopisto Mendoza in his former position and to collect from said respondent through its president or any authorized representative the amount

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[24] *Id*.

[25] *Id.* at 119.

[26] *Id.* at 130.

[27] CA *rollo*, p. 112.

[28] Records, pp. 137-138.

[29] *Id.* at 141-142.

of ₱90,930.00 representing complainant's backwages plus additional backwages to be computed at the rate of ₱866.00 per month from January 2, 1990 up to the time complainant is reinstated in his former position and thereafter to turn over said amount to this Regional Arbitration Branch for further disposition. Should you fail to collect said amount in cash, you are hereby directed to cause the satisfaction of the same on movable or immovable properties of the respondent not other (sic) exempt from execution. You are further directed to return this writ of execution within sixty (60) days from receipt hereof, together with your report thereon. You may collect your legal fee from the respondent in accordance with the Revised Rules of the NLRC.[30]

On 1 March 1990, in compliance with the Second *Alias* Writ of Execution, Sheriff Anthony B. Gaviola levied[31] whatever interest, share, right, claim and/or participation of ZBTKBI had over a parcel of land, together with all the buildings and improvements existing thereon, covered by Transfer Certificate of Title (TCT) No. 66,696 (formerly TCT No. 61,628).[32]

On 13 June 1990, the afore-described property was sold at public auction for ₱96,443.53, with Mendoza as the sole highest bidder.[33] The property was not redeemed. As a consequence, Sheriff Gaviola issued on 25 June 1991 a Sheriff's Final Certificate of Sale[34] in favor of Mendoza over whatever interest, share, right, claim and/or participation ZBTKBI had over the parcel of land.

Having failed to take possession of the land in question, Mendoza filed a Petition (for Issuance of Writ of Possession) on 14 February 2000,[35] praying that the same be issued ordering that actual possession over the real property, together with all

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[30] *Id*.

[31] Notice of Levy dated 28 February 1990; *rollo*, p. 161.

[32] Records, p.145.

[33] *Ibid.*; See also CA *rollo*, p. 52.

[34] Records, pp. 145-146.

[35] *Id.* at 152-158.

the buildings and improvements thereon, covered by TCT No. 66,696, be given/delivered to him; and that ZBTKBI be ordered to reimburse and/or refund to him all rents, earnings and income from said properties from 13 June 1991 until he would be placed in actual possession thereof.[36]

In an Order dated 5 May 2000, Executive Labor Arbiter Plagata granted the petition.[37] The decretal portion of the order reads:

> WHEREFORE, premises considered, complainant's petition dated 07 February 2000 for issuance of a writ of possession is hereby granted.
>
> Accordingly, let a writ of possession be so issued to place the complainant in possession (of) the rights, interests, shares, claims, and participations of Zamboanga Barter Traders Kilusan Bayan, Inc. in that parcel of land covered by Transfer Certificate of Title No. T-66,696 of the Registry of Deeds for Zamboanga City, which were sold on execution to the complainant on 13 June 1990, and in whose favor a final certificate of sale for such rights, interests, shares, claims, and/or participation was executed and issued on 25 June 1991.[38]

Pursuant to said Order, a Writ of Possession was issued by Executive Labor Arbiter Plagata on 23 May 2000.[39]

A Notice dated 1 June 2000 informing ZBTKBI of the writ of possession was personally served by NLRC-RAB Branch No. IX Sheriff Danilo P. Tejada, but the same was not accepted.[40]

ZBTKBI filed on 5 June 2000 a Motion for Reconsideration of the order granting the writ of possession.[41] The motion was denied in an order dated 7 June 2000.[42]

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[36] *Id.* at 152-158.

[37] *Id.* at 200-207.

[38] *Id.* at 204.

[39] *Id.* at 210-212.

[40] *Id.* at 214.

[41] *Id.* at 217-228.

[42] *Id.* at 250-251.

Sheriff Tejada submitted a Sheriff's Service Report dated 22 June 2000 informing Executive Labor Arbiter Plagata that the writ of possession was returned duly served and fully satisfied.[43] On the same date, Mendoza, thru a letter, acknowledged that the writ of possession had been satisfied and implemented.[44]

On 5 July 2000, ZBTKBI filed a Petition for *Certiorari* and Prohibition, with Prayer for Injunction and/or Restraining Order before the Court of Appeals.[45] It raised the following issues:

1. PUBLIC RESPONDENT AND SHERIFF TEJADA GRAVELY ABUSED THEIR DISCRETION WHEN THEY CAUSED THE LEVY ON THE PARCEL OF LAND BELONGING TO THE REPUBLIC, WITHOUT PRIOR NOTICE AND AFTER THE LAPSE OF FIVE YEARS FROM THE FINALITY OF JUDGMENT.

2. PETITIONER RESPECTFULLY SUBMITS THAT THE PROCEEDINGS THAT FOLLOWED THE LEVY, SUCH AS THE SALE, AUCTION AND THE ISSUANCE OF WRIT OF POSSESSION, ARE VOID *AB INITIO*.

3. PETITIONER RESPECTFULLY SUBMITS THAT THERE EXISTS NO LEGAL GROUND TO ALLOW RESPONDENT MENDOZA TO CONTINUOUSLY POSSESS THE PROPERTY BELONGING TO THE REPUBLIC.

4. THE SALE OF THE PROPERTY TO MENDOZA BY THE NLRC-RAB 9 SHERIFF FOR ₱90, 930, BEING SO SCANDALOUSLY LOW AND SHOCKING TO THE CONSCIENCE, AMOUNTED TO GRAVE ABUSE OF DISCRETION.[46]

On 14 August 2000, the Office of the Solicitor General manifested that it be excused form filing a Comment on the petition.[47]

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[43] *Id.* at 256-257.

[44] *Id.* at 260.

[45] CA *rollo*, pp. 2-25.

[46] *Id.* at 10.

[47] *Id.* at 91-92.

On 20 November 2000, the Court of Appeals promulgated a decision[48] denying the petition of ZBTKBI. In doing so, it ruled that based on the documents, the owner of the subject property was ZBTKBI and not the Republic. Since the Republic was not the owner of the property involved, there was no need to give it notice of the levy and subsequent sale. It said that the Office of the Solicitor General had declared that the Government had no interest in the instant case. It added that the sale of the property and the confirmation of Mendoza's ownership could not be annulled simply because the winning bid of ₱90,960.00 was scandalously low and shocking. It explained that it was for the benefit of the judgment debtor that the winning bid was low, for this gives him the opportunity to easily redeem the property.

ZBTKBI filed a Motion for Reconsideration,[49] which the Court of Appeals denied per resolution dated 31 May 2001.[50]

Hence, this petition for review on *certiorari* filed on 27 June 2001.

On 15 August 2001, this Court denied the petition for failure to show that a reversible error had been committed by the Court of Appeals.[51] Petitioner filed a motion for reconsideration[52] on 8 September 2001, which Mendoza opposed.[53]

On 12 November 2001, the Canelar Trading Center Stallholders,[54] represented by Atty. Amoran Batara, filed a Motion to Admit Intervention with Motion for Reconsideration of the

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[48] *Id.* at 193-201.

[49] *Id.* at 214-247.

[50] *Id.* at 266-267.

[51] *Rollo*, p. 194.

[52] *Id.* at 204-218.

[53] *Id.* at 305-310.

[54] 99 individuals who are members and incorporators of ZBTKBI and are the present occupants and stall holders of the former Barter Trade site, which is now called and used as the "Canelar Trading Center."

Court's resolution dated 15 August 2001.[55] They asked the Court to declare the levy and public sale of the land covered by TCT No. T-66,696 as void *ab initio* and to allow them to pay the ₱96,000 plus legal interest from 30 June 1990 to Mendoza[56] to answer for the awards given him by the NLRC, and to order the Register of Deeds of Zamboanga City to cancel TCT No. T-66,696 and re-title the same in their names.

On 7 December 2001, Mendoza filed his Comment on petitioner's motion for reconsideration.[57]

On 14 January 2002, the Court granted petitioner's motion for reconsideration. The resolution of 15 August 2001 was set aside and the petition reinstated.[58] Mendoza was required to comment on the petition.

On 6 February 2002, the Committee on Good Government of the House of Representatives conducted a hearing regarding Hon. Benasing Macarambon, Jr.'s privilege speech concerning the alleged dubious awards of real properties jointly owned by ZBTKBI and the Republic to Mendoza.[59] From said hearing, it appeared that Executive Labor Arbiter Rhett Julius J. Plagata admitted violating the Rules of Court and the Labor Code when he ordered the execution of his judgment by mere motion after five years from its finality.[60]

On 19 March 2002, the Court received Mendoza's Comment on the petition.[61]

On 14 March 2002, intervenors Canelar Trading Center Stallholders filed an *Ex Parte* Motion to Admit Additional Evidence consisting of the testimony of Executive Labor Arbiter Rhett

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[55] *Rollo*, pp. 395-421.

[56] *Id.* at 418.

[57] *Id.* at 545-551.

[58] *Id.* at 589-a to 589-b.

[59] *Id.* at 598-793.

[60] *Id.* at 951-1111.

[61] *Id.* at 1283-1291.

Julius J. Plagata in the Congressional Hearing held on 6 February 2002.[62] ZBTKBI adopted said motion filed by the intervenors.[63]

On 12 July 2002, the Office of the Solicitor General, by way of Manifestation, declared that even assuming *arguendo* that the conditions for the reversion of the parcel of land donated by ZBTKBI to the Republic may have accrued at the time of the levy, the Republic had neither lost its title and right to the buildings and improvements it constructed on the subject land worth ₱5M, nor waived its right to exercise ownership over them.[64]

In a Manifestation dated 25 March 2003, intervenors informed the Court that a case in the RTC of Zamboanga City, docketed as Civil Case No. 5232, had been filed for the cancellation of TCT No. T-158,724 issued on 21 September 2001, regarding the subject lot, in the name of private respondent Teopisto Mendoza.[65]

The OSG was required to file its comment on the instant petition considering that government property was involved in this case.[66] It filed its Comment on 2 November 2006.

The instant petition raises the following issues:

1. THE HONORABLE COURT OF APPELAS ERRED IN NOT PASSING UPON THE ISSUE OF THE NULLITY OF THE LEVY, IT HAVING BEEN MADE WITHOUT PRIOR NOTICE TO THE REPUBLIC.

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT ALL THE PROCEEDINGS SUBSEQUENT TO THE INVALID LEVY, SUCH AS THE AUCTION, THE CERTIFICATE OF SALE AND THE ISSUANCE OF THE WRIT OF POSSESSION, ARE VOID *AB INITIO*.

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[62] *Id.* at 1293-1301.

[63] *Id.* at 1450-1454.

[64] *Id.* at 1468-1472.

[65] *Id.* at 2416-2418.

[66] *Id.* at 2885.

3. THE HONORABLE COURT OF APPELAS ERRED IN NOT DECLARING THE EXECUTION SALE OF THE SUBJECT LOT AS VOID *AB INITIO* CONSIDERING THAT THE SHERIFF COMMITTED GRAVE ABUSE OF DISCRETION IN CAUSING AN OVER-LEVY ON A ₱100 MILLION PROPERTY FOR A JUDGMENT FOR SUM OF MONEY IN THE AMOUNT OF ₱96,433.53.

4. THE HONORABLE COURT OF APPEALS ERRED IN NOT PASSING UPON THE ISSUE THAT THE JUDGMENT *A QUO* MAY NO LONGER BE EXECUTED BY MERE MOTION UNDER SECTION 6, RULE 39 OF THE RULES OF COURT (NOW 1997 RULES OF CIVIL PROCEDURE).

5. THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THE DONATED PROPERTY HAS ALREADY REVERTED TO THE PETITIONER KILUSAN.[67]

In resolving this case, we first rule on the issue of ownership over the 13,643 square meters of land located at Barrio Canelar, City of Zamboanga.

Petitioner argues that the Court of Appeals erred in ruling that the donated property was no longer owned by the Republic of the Philippines because ownership thereof had already reverted to it (petitioner).

From the records, the subject property was donated by petitioner (donor) to the Republic (donee) with the following conditions already adverted heretofore but are being reiterated for emphasis:

1. That upon the effectivity or acceptance hereof the DONEE shall, thru the authorized agency/ministry, construct a ₱5 Million Barter Trade market building at the afore-described parcel of land;

2. That the aforesaid Barter Trade Market building shall accommodate at least 1,000 stalls, the allocation of which shall be determined by the Executive Committee for Barter Trade in coordination with the Officers and Board of Directors the Zamboanga Barter Traders' Kilusang Bayan,

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[67] *Id.* at 27-28.

Inc., provided, however, that each member of the DONOR shall be given priority;

3. That the said Barter Trade Market building to be constructed as above-stated, shall be to the strict exclusion of any other building for barter trading in Zamboanga City, Philippines;

4. That in the event barter trading shall be phased out, prohibited, or suspended for more than one (1) year in Zamboanga City, Philippines, the afore-described parcel of land shall revert back to the DONOR without need of any further formality or documentation, and the DONOR shall have the first option to purchase the building and improvements thereon.

5. That the DONEE hereby accepts this donation made in its favor by the DONOR, together with the conditions therein provided. (Underscoring supplied)

It is clear from condition number 4 that the property donated to the Republic, in the event that barter trading was phased out, prohibited or suspended for more than one year in Zamboanga City, shall revert to the donor without need of any further formality or documentation. Effective 1 October 1988, per Memorandum Circular No. 1 of the Office of the President dated 17 June 1988, barter trade in Zamboanga City was totally phased out. Following the condition contained in the Deed of Donation, the donated land **shall revert to the petitioner without further formality or documentation.** It follows that upon the phase-out of barter trade, petitioner again became the owner of the subject land. As found by the Court of Appeals, Atty. Hasan G. Alam subscribed to the legal reality that ZBTKBI was the owner of the subject land when he wrote Lt. Gen. Ruperto A. Ambil, Jr. of the Southern Command on 6 February 1996, requesting the return of the original TCT covering the property.[68] Thus, when the property was levied and sold on 1 March 1990 and 13 June 1990, respectively, it was already petitioner that owned the same. It should be clear that **reversion applied only to the land and not to the building and improvements made by the Republic on the land worth ₱5,000,000.00.**

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[68] CA *rollo*, pp. 70, 113-114.

Petitioner further claims that the Court of Appeals erred in ruling that there was automatic reversion of the land, because it put the Republic in a disadvantageous situation when it had a ₱5 million building on a land owned by another.

This claim is untenable. The Court of Appeals merely enforced or applied the conditions contained in the deed of donation. The Republic accepted the donation subject to conditions imposed by the donor. In condition number 4, the Republic is given the right to sell the building it constructed on the land and the improvements thereon. If ever such condition is disadvantageous to the Republic, there is nothing that can be done about it, since it is one of the conditions that are contained in the donation which it accepted. There being nothing ambiguous in the contents of the document, there is no room for interpretation but only simple application thereof.

We likewise find to be without basis petitioner's claim that the Republic should be reimbursed of the cost of the construction of the barter trade building pursuant to condition number 4. There is nothing there that shows that the Republic will be reimbursed. What is stated there is that petitioner has the first option to purchase the buildings and improvements thereon. In other words, the Republic can sell the buildings and improvements that it made or built.

Petitioner's statement that neither party to the donation has expressly rescinded the contract is flawed. As above ruled, the deed of donation contains a stipulation that allows automatic reversion. Such stipulation, not being contrary to law, morals, good customs, public order or public policy, is valid and binding on the parties to the donation. As held in *Dolar v. Barangay Lublub (Now P.D. Monfort North) Municipality of Dumangas*,[69] citing *Roman Catholic Archbishop of Manila v. Court of Appeals*[70]:

The rationale for the foregoing is that in contracts providing for automatic revocation, judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract

[69] G.R. No. 152663, 18 November 2005, 475 SCRA 458, 470.

[70] G.R. Nos. 77425 and 77450, 19 June 1991,198 SCRA 300, 308-309.

already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper.

When a deed of donation, . . . expressly provides for automatic revocation and reversion of the property donated, the rules on contract and the general rules on prescription should apply, and not Article 764 of the Civil Code. Since Article 1306 of said Code authorizes the parties to a contract to establish such stipulations, . . . not contrary to law, . . . public order or public policy, we are of the opinion that, at the very least, that stipulation of the parties providing for automatic revocation of the deed of donation, without prior judicial action for that purpose, is valid subject to the determination of the propriety of the rescission sought. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not in itself the revocatory act.

The automatic reversion of the subject land to the donor upon phase out of barter trading in Zamboanga City cannot be doubted. Said automatic reversion cannot be averted, merely because petitioner-donor has not yet exercised its option to purchase the buildings and improvements made and introduced on the land by the Republic; or because the Republic has not yet sold the same to other interested buyers. Otherwise, there would be gross violation of the clear import of the conditions set forth in the deed of donation.

Petitioner maintains that the Court of Appeals erred in not passing upon the issue that the judgment *a quo* may no longer be executed by mere motion under Section 6, Rule 39 of the Revised Rules of Court.

Looking over the decision of the Court of Appeals, it appears that said issue was, indeed, skirted by the appellate court. Be that as it may, we shall rule on the same.

Petitioner contends that the decision of the NLRC dated 15 November 1983, which became final and executory on 18 January 1984, can no longer be executed by mere motion beyond five years after its finality during the first week of December 1983, but by independent action. It adds that the levy, which was made on the strength of a (second *alias*) writ of execution that

was issued upon a mere motion by Mendoza filed after five years from the finality of the NLRC decision, was invalid. This being so, all proceedings subsequent to the levy, petitioner claims, are likewise void. To further support its contention, it submitted to the Court the transcript of stenographic notes of the Congressional Hearing of the Committee on Good Government of the House of Representatives wherein Executive Labor Arbiter Rhett Julius J. Plagata allegedly admitted that he violated the Rules of Court and the Labor Code when he ordered the execution of his judgment by mere motion after five years from its finality.

Was public respondent Labor Arbiter justified in issuing the second *alias* writ of execution when the motion asking for the same was filed on 18 December 1989 beyond five years after the decision of the NLRC became final and executory on 18 January 1984?

We believe so.

We find that private respondent Mendoza need not file an independent action to enforce the NLRC decision. The motion he filed on 18 December 1989 to execute the judgment is sufficient in light of his two prior motions[71] filed within the five-year period and the non-satisfaction of the judgment for causes beyond his control.

Section 6 of Rule 39[72] of the Rules of Court provides:

> Sec. 6. *Execution by motion or by independent action*. — A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

The purpose of the law (or rule) in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights.[73]

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[71] One was filed on 13 July 1983 even prior to the decision becoming final and executory.

[72] Prior to 1997 Rules of Civil Procedure.

[73] *Francisco Motors Corporation v. Court of Appeals*, G.R. Nos. 117622-23, 23 October 2006, 505 SCRA 8, 26.

It is clear from the above rule that a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.[74] If the prevailing party fails to have the decision enforced by a mere motion after the lapse of five years from the date of its entry (or from the date it becomes final and executory), the said judgment is reduced to a mere right of action in favor of the person whom it favors and must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form.[75] However, there are instances in which this Court allowed execution by motion even after the lapse of five years upon meritorious grounds.[76] In *Lancita v. Magbanua*,[77] the Court declared:

> In computing the time limited for suing out an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. *Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued* without *scire facias*.

In *Republic v. Court of Appeals*,[78] we ruled:

> To be sure, there had been many instances where this Court allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: the *delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.

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[74] *Camacho v. Court of Appeals*, 351 Phil. 108, 113.

[75] *Macias v. Lim*, G.R. No. 139284, 4 June 2004, 431 SCRA 20, 39.

[76] *Yau v. Silverio, Sr.*, G.R. Nos. 158848 and 171994, 4 February 2008, 543 SCRA 520, 529.

[77] 117 Phil. 39, 44-45 (1963).

[78] 329 Phil. 115, 121-122 (1996).

In *Gonzales v. Court of Appeals*,[79] we emphasized that if the delays were through no fault of the prevailing party, the same should not be included in computing the 5-year period to execute a judgment by motion.

In the case under consideration, the decision of the NLRC was promulgated on 15 November 1983, and it became **final and executory on 18 January 1984** (not December 1983 as ruled by the Court of Appeals). On 2 July 1984, a writ of execution was issued by Executive Labor Arbiter Abdulwahid. Said writ was returned unsatisfied. From the return of the sheriff, there is no doubt that he was threatened by Atty. Hasan G. Alam, President of ZBTKBI, who told him to "clad himself with iron dress" if he would enforce the writ. Thereafter a motion for issuance of an *alias* writ of execution dated 23 October 1984 was filed by Mendoza, because the lifespan of the first writ of execution expired without being satisfied. Consequently, an *Alias* Writ of Execution was issued on 19 November 1984. The writ remained unsatisfied. At this point, two writs of execution were already issued but were not satisfied. **On 18 December 1989**, Mendoza **filed a Motion for Issuance of (Second) *Alias* Writ of Execution,** which public respondent Executive Labor Arbiter Rhett Julius J. Plagata issued on 2 January 1990.

It cannot be disputed that Mendoza had not slept on his rights. In fact, he filed three motions so that the judgment in his favor could be executed and satisfied. The judgment was satisfied by virtue of the second *alias* writ of execution, which was issued upon a motion filed beyond the five-year period. The satisfaction of the judgment was not successful during the first two writs of execution. The delay in the enforcement of the two writs was clearly caused by petitioner through its President, Atty. Alam. Said delay was indeed beneficial and advantageous to petitioner, because the judgment against it, at that time, was yet to be implemented. It is very clear that if not for the threats received by the sheriff tasked to implement the writs of execution, the satisfaction of judgment would not have been delayed.

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[79] G.R. No. 62556, 13 August 1992, 212 SCRA 595.

Under the circumstances obtaining, we hold that the five-year period allowed for enforcement of a judgment by motion was deemed to have been interrupted by petitioner. The prevention of the satisfaction of the judgment on the first two writs of execution cannot be blamed on Mendoza. The satisfaction of the judgment was already beyond his control. He did what he was supposed to do — file the requisite motions so that writs of execution would be issued. In view of the foregoing and for reasons of equity, we deem that the Motion for Issuance of *Alias* Writ of Execution filed by Mendoza on 18 December 1989 has been filed within the five-year period.

Petitioner argues that the levy made by Sheriff Anthony B. Gaviola on 1 March 1990 over the land subject of this case was void, there being no notice to its owner — the Republic. As a result, the Republic was deprived of its property without due process. It further argues that since the levy was invalid, all proceedings subsequent thereto — such as the auction, the Final Certificate of Sale, and the issuance of the Writ of Possession — are void *ab initio*.

We are not persuaded. The arguments advanced by petitioner, which are all premised on the assumption that the Republic was still the owner of the land when the levy was made, have no leg to stand on. As ruled above, the land reverted to petitioner without need of any further formality or documentation when barter trading was phased out in Zamboanga City. Not being the owner of the land when the levy was made, the Republic need not have been notified anymore. It cannot be deprived of a piece of land of which it is no longer the owner. If the Republic is still in possession of the TCT over the subject land, it must surrender the same to the proper authorities. The fact that the Republic is no longer the owner of the subject land does not mean that it no longer owns the buildings, structures and improvements it made and introduced on the subject land. Control and possession over said buildings, structures and improvements shall be returned to the Republic. The Republic, pursuant to condition No. 4 of the Deed of Donation, can sell the buildings, structures and improvements to interested buyers, with petitioner being the first in line.

Petitioner claims that the execution/auction sale of the subject land was void *ab initio,* considering that the sheriff made an over-levy when he levied the subject property allegedly worth ₱100 million pesos for a judgment claim worth ₱96, 433.53. It added that the price for which the subject land was sold at the auction sale was so scandalously low and shocking to the conscience. Moreover, it said that it should not be faulted for not redeeming the property within the allowable period.

The relevant section as to what a sheriff should levy upon in the enforcement of an execution of a money judgment is Section 15,[80] Rule 39 of the Rules of Court which provides:

> Sec. 15. *Execution of money judgments.* — The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.
>
> Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property may be levied on in like manner and with like effect as under a writ of attachment.

From said section, it is clear that a sheriff must levy upon and sell only such property, personal or real, as is amply sufficient to satisfy the judgment and costs. Petitioner faults the sheriff for levying on the subject property, the value of which is so much more than the money judgment.

Can the sheriff be faulted for levying on the subject land?

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[80] Prior to the 1997 Rules of Civil Procedure.

The answer is no. It must be remembered that the sheriff tried to satisfy the money judgment when he went to Atty. Alam, President of ZBTKBI. Instead of cooperating and satisfying the judgment, Atty. Alam did not comply with the money judgment. Instead, he threatened the sheriff, saying that if the latter insisted on enforcing the writ of execution, he should wear an iron dress. The actuation of Atty. Alam was clear defiance of the executory judgment. Petitioner had no intention of satisfying the judgment. Two writs of execution were issued, but they were not satisfied. If petitioner were truly willing to cooperate in the satisfaction of the judgment, the levy of the subject property could have been prevented if only petitioner handed over to, or informed, the sheriff any of its properties sufficient to satisfy the judgment. It did not. Knowing the risk and difficulty of levying on any of the properties of petitioner, the sheriff thus levied upon any property that he could get hold of — the subject property.

Petitioner insists that the auction sale of the subject property should be voided, because the winning bid was so scandalously low and shocking to the conscience.

We do not agree. It is settled that when there is a right to redeem, inadequacy of price is of no moment, for the reason that the judgment debtor always has the chance to redeem and reacquire the property. In fact, the property may be sold for less than its fair market value, precisely because the lesser the price, the easier for the owner to effect a redemption.[81] In *Hulst v. PR Builders, Inc.*,[82] the Court ruled:

> [G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When

[81] *Valmonte v. Court of Appeals*, 362 Phil. 616, 627 (1999).

[82] G.R. No. 156364, 3 September 2007, 532 SCRA 74, 103-104.

there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption. x x x.

In the instant case, as stated in the Sheriff's Final Certificate of Sale, petitioner had the right to redeem, but it failed to exercise such right. In ruling on this matter, the Court of Appeals explained:

It works naturally for the benefit of the judgment debtor that the winning bid was low, for this gives him the opportunity to easily redeem his property through means easily within his grasp, provided he exercises a minimum of effort. When he foregoes such opportunity to redeem, he runs the risk of totally losing his property to the judgment creditor. He cannot later be heard in objection to the sale, claiming that the winning bid was too low. x x x Furthermore, it appears that petitioner was never deprived of its opportunity to recover the property it claims to have been unlawfully sold. It cannot claim that it is the Republic that is the real owner and was deprived of due process, it appearing that such is not the case, as previously explained.[83]

To show that it should not be faulted for its failure to exercise its right to redeem, petitioner explains as follows:

5.1. True, petitioner may have failed to redeem the property sold on execution within the allowable period, on the assumption that the prior levy and the auction sale were valid. The failure of the petitioner to do so, however, is not deliberate and made without any compelling reason. It appears that from the 2nd quarter of 1989 up to December 1995, the administration and operation of the petitioner-cooperative were entrusted by its President, Atty. Hasan G. Alam, to Treasurer, Mr. Hadji Muhaimin Alshibli, for reasons apparently personal to the president. It likewise appears that during the period when Mr. Alshibli was the caretaker of the petitioner-cooperative, he never convened or called the board to any meeting.

5.2. For reasons personal to him, he opted to administer and operate the cooperative in his own way. Admittedly, no member of the

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[83] CA *rollo*, p. 201.

cooperative ever questioned the manner with which Mr. Alshibli was running the petitioner-cooperative. This being the case, neither the president nor any member of the board was aware that the land used by the cooperative had been accordingly sold on execution and that the period to redeem it had already lapsed. Viewed in the light of this factual consideration, it would be highly prejudicial to the majority of the cooperative members if they are deemed to have permanently lost their own property just because of the failure of Mr. Alshibli to redeem the property for reasons purely personal to him.[84]

The foregoing explanation will not help petitioner escape the predicament it is in. It cannot pass the blame to others for having failed to exercise its right of redemption. Petitioner has no one to blame but its officers who failed to look after its interests and members. It could have redeemed the property but it failed to do so. It is now too late in the day for petitioner, considering that the ownership of the subject property was validly and legally transferred to Teopisto Mendoza when he bought said land at the auction sale without petitioner redeeming the same at the proper time.

WHEREFORE, all the foregoing considered, the instant petition is *DENIED*. The decision of the Court of Appeals dated 20 November 2000 in CA-G.R. SP No. 59520 is *AFFIRMED*.

SO ORDERED.

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

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[84] *Rollo,* pp. 41-42.

THIRD DIVISION

[G.R. No. 159808. September 30, 2008]

LEOPARD INTEGRATED SERVICES, INC. and/or JOSE POE, *petitioners, vs.* **VIRGILIO MACALINAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; JURISDICTION; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS. — While the well-established rule is that the jurisdiction of the Court in cases brought before it *via* Rule 45 is limited to reviewing errors of law, the admitted exception is where the findings of the NLRC contradict those of the labor arbiter, then the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings. In this case, the LA's findings are not in accord with those of the NLRC and the CA. The LA sustained petitioners' contention that respondent was not dismissed but merely relieved from his post, while the NLRC and the CA accepted respondent's claim that he was placed on floating status.

2. ID.; EVIDENCE; PHYSICAL EVIDENCE; CERTIFICATION FROM POSTMASTER; BEST EVIDENCE TO PROVE THAT A NOTICE HAS BEEN VALIDLY SENT. — Per Certification dated March 8, 2001, the Postmaster of the Mandaluyong Central Post Office attested that said letter-memorandum was mailed on October 14, 1998. This sufficiently negates the NLRC's finding, specially in the light of the rule that a certification from the postmaster would be the best evidence to prove that the notice has been validly sent. The NLRC apparently misread the date indicated on the registry return receipt when it found that the letter-memorandum was mailed only on October 14, 1999. Evidently, such erroneous conclusion of the NLRC cannot be upheld by the Court.

3. ID.; ID.; BURDEN OF PROOF; ONE WHO ALLEGES A FACT HAS BURDEN OF PROVING IT. — It is also noteworthy that respondent failed to rebut petitioners' evidence establishing

that he was not dismissed. The rule is that one who alleges a fact has the burden of proving it. Aside from allegations, it also rests upon respondent to show that petitioners dismissed him from employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The records are bereft of any indication that respondent was given any "walking papers" or even the slightest manifestation from petitioners that he was being terminated or prevented from returning to work. There is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from his employment nor was he prevented from returning to his work.

4. ID.; ID.; ID.; ID.; ACTIONS OF RESPONDENT BELIE HIS ALLEGATION THAT HE WAS DISMISSED. — It may be true that on September 12, 1998, respondent replied to the letter-memorandum dated September 8, 1998 issued by petitioners requiring him to explain regarding Westmont's complaint against him; however, that was the last to be heard of from respondent. Respondent never bothered to inform petitioners of the address of his new residence. He may also have appeared at petitioners' office to claim his 13th month pay on January 1999, and to ask for a computation of his backwages on February 1999, but these were intermittent appearances which did not indicate his intent to resume working. As a matter of fact, his letter dated February 27, 1999, asking for backwages from March 1996 up to September 1998 suggests that he admits having stopped working as of September 1998. Another indication of petitioners' lack of intention in dismissing respondent from employment, and respondent's lack of interest in resuming work, is that during the preliminary conference of the case before the labor tribunal, petitioners offered to allow respondent to report for work but the latter refused. This was not denied by respondent. And even during the pendency of the case before the CA, respondent was subsequently admitted into employment by petitioners and was given a posting at the United Overseas Bank, Binondo Branch. Given these circumstances, it is clear that there was no dismissal to begin with; instead, it was respondent who, by his own acts, displayed his lack of interest in resuming his employment with petitioners.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; COMPLAINT; SURROUNDING

CIRCUMSTANCES OF THE CASE SHOULD BE TAKEN INTO ACCOUNT TOGETHER WITH FILING OF THE COMPLAINT. — The fact that respondent filed a complaint for illegal dismissal, as noted by the CA, is not by itself sufficient indicator that respondent had no intention of deserting his employment since the totality of respondent's antecedent acts palpably display the contrary. In *Abad v. Roselle Cinema,* the Court ruled that: The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC*, the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a *non sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee." All these, taken into consideration, support the LA's dismissal of respondent's complaint.

6. POLITICAL LAW; BILL OF RIGHTS; DUE PROCESS; SUBSEQUENT ACTS OF A PARTY CAN NOT BE INTRODUCED IN LITIGATION. — Petitioners seek to introduce into evidence subsequent acts committed by respondent, which allegedly buttress their claim. Suffice it to say that dictates of due process prohibit this. In any case, the evidence on hand, even without said subsequent acts, are enough to justify the dismissal of respondent's complaint.

APPEARANCES OF COUNSEL

Amor L. Comia for petitioners.
Alensuela & Capoon Law Firm for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Herein petition for review on *certiorari* under Rule 45 of the Rules of Court originated from an illegal dismissal case filed by Virgilio Macalinao (respondent) against Leopard Integrated

Services, Inc. and/or Jose Poe (petitioners). Respondent, who was a security guard in petitioners' agency, alleged that he was placed on "floating status" after he was relieved from his previous posting on September 8, 1998, until he filed the case on June 28, 1999. Petitioners belie respondent's allegation and assert that it was respondent who went on absence without leave (AWOL) by failing to report for work when ordered to do so.

In a Decision dated February 29, 2000 by the Labor Arbiter (LA), respondent's complaint for illegal dismissal, underpayment of salaries/wages, service incentive leave pay, refund of deductions, uniform allowance and attorney's fees, was dismissed for lack of merit.

On appeal to the National Labor Relations Commission (NLRC), the LA's Decision was reversed. The dispositive portion of the NLRC Resolution dated December 20, 2000 provides:

> WHEREFORE, the assailed decision of 29 February 2000 is REVERSED. Respondent LEOPARD INTEGRATED SERVICES and JOSE B. POE are hereby ordered to immediately reinstate complainant to his former position as security guard without loss of seniority rights and other benefits and privileges accruing to him with full backwages from the time of his dismissal up to the date of his actual reinstatement. Furthermore, respondents, jointly and solidarily, are ordered to pay the other money claims, otherwise computed as follows:
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> | | | |
> |---|---|---|
> | 1. | BACKWAGES | ₱ 129,152.40 |
> | 2. | REFUND OF CASH BOND | ₱ 2,250.00 |
> | 3. | UNDERPAYMENT OF WAGES | ₱ 2,730.00 |
> | 4. | SERVICE INCENTIVE LEAVE PAY | ₱ 3,352.50 |
> | 5. | 13th MONTH PAY | ₱ 10,762.70 |
> | | TOTAL MONEY AWARD | ₱ 148,247.60 |
>
> All other money claims are dismissed for lack of merit.
>
> SO ORDERED.[1]

Petitioners filed a motion for reconsideration but this was denied by the NLRC per Resolution dated February 1, 2002.[2]

[1] *Rollo*, pp. 78-79.

[2] *Id.* at 82.

Petitioners brought the case up to the Court of Appeals (CA), and in a Decision dated May 20, 2003, the NLRC Resolutions dated December 20, 2000 and February 1, 2002, were affirmed.[3] Petitioners' motion for reconsideration was denied per Resolution dated August 8, 2003.[4]

Petitioners thus filed the present petition on the following grounds:

A

THE COURT OF APPEALS' MISPLACED APPLICATION OF THE DOCTRINES LAID DOWN IN *LABOR V. NLRC*, 248 SCRA 183, 14 SEPTEMBER 1995, AND *HAGONOY RURAL BANK, INC. VS. NLRC*, 285 SCRA 297, 28 JANUARY 1998, IN THE CASE AT BAR RAISES A SERIOUS QUESTION OF LAW THAT SHOULD BE CLARIFIED INASMUCH AS PETITIONER COMPANY WAS ABLE TO SUBSTANTIATE THE DELIBERATE AND UNJUSTIFIED REFUSAL OF PRIVATE RESPONDENT MACALINAO TO RESUME HIS EMPLOYMENT.

B

PRIVATE RESPONDENT MACALINAO WAS NOT PLACED ON FLOATING STATUS AND FOR THIS REASON, THE COURT OF APPEALS' QUESTIONABLE APPLICATION OF THE LAW OF THE CASE IN *VALDEZ VS. NLRC*, 286 SCRA 87, 09 FEBRUARY 1998, AND *AGRO COMMERCIAL SECURITY SERVICES, INC. VS. NLRC*, 175 SCRA 790, 31 JULY 1989, MERITS A JUDICIAL REVIEW THEREOF.

C

IT IS CONTRARY TO LAW AND JURISPRUDENCE TO CONSIDER THE REINSTATEMENT OF PRIVATE RESPONDENT MACALINAO AND TO PAY HIM BACKWAGES AND ATTORNEY'S FEES.[5]

Petitioners argue that respondent was not dismissed; rather, it was respondent who voluntarily severed his employment by

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[3] *Id.* at 64.

[4] *Id.* at 68.

[5] *Rollo*, p. 31.

abandoning his work. Petitioners contend that respondent went on AWOL after he refused to report to the company's headquarters as required of him per letter-memorandum dated October 10, 1998.

On the other hand, respondent claims that he did not receive the letter-memorandum dated October 10, 1998, and that petitioners placed him on a "floating" status.

While the well-established rule is that the jurisdiction of the Court in cases brought before it *via* Rule 45 is limited to reviewing errors of law,[6] the admitted exception is where the findings of the NLRC contradict those of the labor arbiter, then the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings. [7]

In this case, the LA's findings are not in accord with those of the NLRC and the CA. The LA sustained petitioners' contention that respondent was not dismissed but merely relieved from his post, while the NLRC and the CA accepted respondent's claim that he was placed on floating status.

The rule in labor cases is that the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[8] In the present case, petitioners were able to show that respondent was neither dismissed nor placed on a "floating status."

The evidence for petitioners established that respondent was required to report for work after he was relieved from his post on September 7, 1998 at Westmont Pharma Bonaventure. Thus, in Assignment Order No. 2485 dated September 7, 1998, respondent was assigned to headquarters effective September

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[6] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358.

[7] *Jo v. National Labor Relations Commission*, G.R. No. 121605, February 2, 2000, 324 SCRA 437, 445.

[8] *Abad v. Roselle Cinema*, G.R. No. 141371, March 24, 2006, 485 SCRA 262, 268.

8, 1998, after he was relieved from his post at the Westmont Bonaventure as requested by the client. It should be noted at this juncture that most contracts for security services stipulate that the client may request the replacement of the guards assigned to it, and a relief and transfer order in itself does not sever employment relationship between a security guard and his agency.[9] Also, an employer has the right to transfer or assign its employees from one area of operation to another, or from one office to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits and other privileges; and the transfer is not motivated by discrimination or made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[10] On this score, respondent failed to show that his relief was done in bad faith or with grave abuse of discretion.

Also, in a letter-memorandum dated October 10, 1998, respondent was "advised to report to the HRD Manager not later than October 20, 1998."[11] Respondent denies having received said letter. According to respondent, at the time the letter was sent to him, he had already transferred residence.[12] Respondent's assertion, in fact, serves to boost petitioners' claim. If he was indeed reporting for work, then there was no need to post by registered mail the letter-memorandum to his last known address as petitioners could have easily conveyed to him in person the order to report for work. Moreover, it would have been expedient for respondent to have furnished petitioners with his new address if he was actually reporting to headquarters.

The NLRC did not give credence to petitioners' allegation that the letter-memorandum was sent on October 14, 1998. The NLRC stated:

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[9] *OSS Security and Allied Services, Inc. v. National Labor Relations Commission*, G.R. No. 112752, February 9, 2000, 325 SCRA 157.

[10] *Lanzaderas v. Amethyst Security and General Services, Inc.*, G.R. No. 143604, June 20, 2003, 404 SCRA 505, 516.

[11] *Rollo*, p. 99.

[12] *Id.* at 122.

The twist in this case lies in the purported letter sent to complainant Macalinao by respondent's HRD Manager, Cristina Villacrusis allegedly on October 10, 1998 advising the former to report to the HRD Manager not later than October 20, 1998. Otherwise, failure to report will be construed as abandonment of work.

x x x x x x x x x

However, after a careful scrutiny of the questioned memorandum purportedly dated October 10, 1998, we take cognizance of the fact that the letter has been received by the Mandaluyong Post Office under registry receipt no. 014668 only on October 14, 1999 or one (1) year, three (3) months and sixteen (16) days from the date of the filing of this instant case.[13] (Underscoring supplied)

and concluded that:

Thus, this belated attempt on the part of respondent to create an afterthought defense cannot be constued (sic) as substantial compliance with the mandatory requirement of notice for complainant's abandonment. This fact, standing alone, cannot be given due course and credence so as to satisfy the judicious consideration of this Commission.[14]

Per Certification dated March 8, 2001, the Postmaster of the Mandaluyong Central Post Office attested that said letter-memorandum was mailed on October 14, 1998.[15] This sufficiently negates the NLRC's finding, specially in the light of the rule that a certification from the postmaster would be the best evidence to prove that the notice has been validly sent.[16] The NLRC apparently misread the date indicated on the registry return receipt when it found that the letter-memorandum was mailed only on October 14, 1999. Evidently, such erroneous conclusion of the NLRC cannot be upheld by the Court.[17]

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[13] *Id.* at 76-77.

[14] *Rollo*, p. 77.

[15] *Id.* at 131.

[16] *Columbus Philippines Bus Corporation v. National Labor Relations Commission*, G.R. Nos. 114858-59, September 7, 2001, 364 SCRA 606.

[17] *Orient Express Placement Philippines v. National Labor Relations Commission*, G.R. No. 113713, June 11, 1997, 273 SCRA 256.

It is also noteworthy that respondent failed to rebut petitioners' evidence establishing that he was not dismissed. The rule is that one who alleges a fact has the burden of proving it. Aside from allegations, it also rests upon respondent to show that petitioners dismissed him from employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing.[18] The records are bereft of any indication that respondent was given any "walking papers" or even the slightest manifestation from petitioners that he was being terminated or prevented from returning to work. There is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from his employment nor was he prevented from returning to his work.[19]

It may be true that on September 12, 1998, respondent replied to the letter-memorandum dated September 8, 1998 issued by petitioners requiring him to explain regarding Westmont's complaint against him; however, that was the last to be heard of from respondent. Respondent never bothered to inform petitioners of the address of his new residence. He may also have appeared at petitioners' office to claim his 13th month pay on January 1999, and to ask for a computation of his backwages on February 1999, but these were intermittent appearances which did not indicate his intent to resume working. As a matter of fact, his letter dated February 27, 1999, asking for backwages from March 1996 up to September 1998 suggests that he admits having stopped working as of September 1998.

Another indication of petitioners' lack of intention in dismissing respondent from employment, and respondent's lack of interest in resuming work, is that during the preliminary conference of the case before the labor tribunal, petitioners offered to allow

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[18] *Portuguez v. GSIS Family Bank (Comsavings Bank)*, G.R. No. 169570, March 2, 2007, 517 SCRA 309.

[19] *CALS Poultry Supply Corporation v. Roco*, G.R. No. 150660, July 30, 2002, 385 SCRA 479, 486; *Security and Credit Investigation, Inc. v. National Labor Relations Commission*, G.R. No. 114316, January 26, 2001, 350 SCRA 357.

respondent to report for work but the latter refused.[20] This was not denied by respondent. And even during the pendency of the case before the CA, respondent was subsequently admitted into employment by petitioners and was given a posting at the United Overseas Bank, Binondo Branch.[21]

Given these circumstances, it is clear that there was no dismissal to begin with; instead, it was respondent who, by his own acts, displayed his lack of interest in resuming his employment with petitioners.

The fact that respondent filed a complaint for illegal dismissal, as noted by the CA, [22] is not by itself sufficient indicator that respondent had no intention of deserting his employment since the totality of respondent's antecedent acts palpably display the contrary. In *Abad v. Roselle Cinema*,[23] the Court ruled that:

> The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries, Inc. v. NLRC*, the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a *non sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee." (Emphasis supplied)

All these, taken into consideration, support the LA's dismissal of respondent's complaint.

Petitioners seek to introduce into evidence subsequent acts committed by respondent, which allegedly buttress their claim. Suffice it to say that dictates of due process prohibit this. In any case, the evidence on hand, even without said subsequent acts, are enough to justify the dismissal of respondent's complaint.

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[20] *Rollo*, p. 109.

[21] *Id.* at 146.

[22] *Rollo*, p. 61.

[23] *Abad v. Roselle Cinema, supra* note 8, at 272.

WHEREFORE, the Court of Appeals Decision dated May 20, 2003 and Resolution dated August 8, 2003 are *REVERSED* and *SET ASIDE,* and the Labor Arbiter Decision dated February 29, 2000 dismissing the complaint of respondent is *REINSTATED.*

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 165993. September 30, 2008]

MERIDA WATER DISTRICT, ITS BOARD OF DIRECTORS, NAMELY: SUSANO TOREJAS, JR., LOURDES QUINTE, ROMULO PALES, CARMELITA DE LOS ANGELES, VILLAFRANCA ROSAL, and MWD GENERAL MANAGER NILO C. LUCERO, *petitioners, vs.* **FRANCISCO BACARRO, VICTORINO DOMANILLO, PATRICK BACOL, CARLITO BARRERA, RUSTICA MENDOLA, JOSE DELIO HERMOSO, CHARITO TOLORIO, MA. VICTORIA MAINGQUE, ELMER GO, and GERARDO BIOCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; ABSENCE THEREOF IN CASE AT BAR RENDER ACTION PREMATURE. — P.D. No. 198 as amended by P.D. No. 1479 provides for the administrative remedies regarding a review of water rates, to determine whether a local water district complied with the legal requirements in establishing such rates: SEC. 11. The

last paragraph of Section 63 of the same decree is hereby amended to read as follows: The rates or charges established by such local district, after hearing shall have been conducted for the purpose, shall be subject to review by the Administration to establish compliance with the abovestated provisions. Said review of rates or charges shall be executory and enforceable after the lapse of seven calendar days from posting thereof in a public place in the locality of the water district, without prejudice to an appeal being taken therefrom by a water concessionaire to the [NWRB] whose decision thereon shall be appealable to the Office of the President. An appeal to the [NWRB] shall be perfected within thirty days after the expiration of the seven-day period of posting. The [NWRB] shall decide on appeal within thirty days from perfection. After LWUA reviews the rates established by a local water district, a water concessionaire may appeal the same to the NWRB. The NWRB's decision may then be appealed to the Office of the President. Respondents failed to exhaust administrative remedies by their failure to appeal to the NWRB. Non-exhaustion of administrative remedies renders the action premature.

2. ID.; ID.; ID.; ID.; RATIONALE. — The Court has consistently reiterated the rationale behind the doctrine of exhaustion of administrative remedies: One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so . . . It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; DETERMINATION OF CURRENT RATE FROM WHICH TO COMPUTE THE ALLOWABLE INCREASE IS A QUESTION OF FACT THAT CAN NOT BE THRESHED OUT BEFORE THE COURT. — The determination of the current rate from which to compute

the allowable increase of 60% is a question of fact that cannot be properly threshed out before this Court. The NWRB must be given an opportunity to make a factual finding with respect to this question. This Court accords the factual findings of administrative agencies with utmost consideration because of the special knowledge and expertise gained by these quasi-judicial tribunals from handling specific matters falling under their jurisdiction. Considering that the LWUA confirmed the Rate Schedule of Approved Water Rates for Merida Water District, a schedule that contains different rates that gradually increase, the determination of whether the computation of the percentage increase complies with the 60% limitation is a factual matter best left to the competence of the NWRB.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; RESPONDENTS WERE NOT DENIED THE OPPORTUNITY TO BE HEARD. — The argument of denial of due process deserves scant consideration. The non-observance of the doctrine of exhaustion has been recognized in cases where the party seeking outright judicial intervention was denied the opportunity to be heard in administrative proceedings. In the case at bar, respondents were not denied the opportunity to be heard, as Merida Water District conducted a public hearing on October 10, 2001 regarding the increase of water rates.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT; CONSIDERING THAT THERE WAS NO FINDING ON WHETHER THE RATES PRESENTED IN THE HEARING WERE THE SAME RATES APPROVED BY THE LWUA, THE NWRB MUST BE GIVEN OPPORTUNITY TO RESOLVE THIS MATTER. — When a local water district increases water rates, the law requires the district concerned to conduct a public hearing regarding these rates. The same rates are subject to review by the LWUA, which is tasked to determine whether the establishment of the rates complies with the law. Thus, compliance with the public hearing requirement means that the rates presented in the hearing should be the same rates submitted to the LWUA for review and approval. Considering that there was no finding with regard to this question of fact, whether the rates presented in the hearing were the same rates approved by the LWUA, the NWRB must be given the opportunity to resolve this matter.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for Merida Water District.
Chauncey Y. Boholst for respondents.

D E C I S I O N

PUNO, *C.J.*:

This Petition for Review on *Certiorari* seeks to set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated January 30, 2004 and September 16, 2004, respectively, in CA-G.R. SP No.77141, which affirmed the Orders[3] of the Regional Trial Court (RTC) in favor of respondents.

Petitioners are Merida Water District, a government-owned and controlled corporation[4] that operates the water utility services in the municipality of Merida, Leyte; its Chairman, Susano Torejas, Jr.; members of the Board of Directors, Lourdes Quinte, Romulo Pales, Carmelita de los Angeles, and Villafranca Rosal; and General Manager, Nilo C. Lucero. On October 10, 2001, Merida Water District conducted a public hearing for the purpose of increasing the water rate.[5]

On March 7, 2002, Merida Water District received a letter from the Local Water Utilities Administration (LWUA).[6] The letter stated that on March 5, 2002, the LWUA Board of Trustees, per Board Resolution No. 63, series of 2002, confirmed Merida Water District's proposed water rates.[7] Attached to the letter

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

[2] *Id.* at 55.

[3] *Id.* at 156-157, 174-175.

[4] *Id.* at 27.

[5] *Id.* at 32.

[6] *Id.* at 10.

[7] *Id.* at 124.

was the Rate Schedule of Approved Water Rates containing a progressive increase of water rates over a certain period.[8]

On September 3, 2002, Merida Water District approved Resolution No. 006-02, implementing a water rate increase of ₱90 for the first ten cubic meters of water consumption.[9] Thereafter, petitioners issued notices of disconnection to concessionaires who refused to pay the water rate increase and did not render service to those who opted to pay the increased rate on installment basis.[10]

On February 13, 2003, respondents, consumers of Merida Water District, filed a Petition for Injunction, *etc*.[11] against petitioners before the RTC. Respondents sought to enjoin the petitioners from collecting payment of ₱90 for the first ten cubic meters of water consumption. Respondents alleged that the imposed rate was contrary to the rate increase agreed upon during the public hearing. Respondents claimed that petitioners violated Letter of Instructions (LOI) No. 700 by: (1) implementing a water rate increase exceeding 60% of the previous rate; and (2) failing to conduct a public hearing for the imposed rate of ₱90.[12]

On February 26, 2003, petitioners filed a Motion to Dismiss, alleging that respondents' petition lacked a cause of action as they failed to exhaust administrative remedies under Presidential Decree (P.D.) No. 198, the Provincial Water Utilities Act of 1973, as amended by P.D. Nos. 768 and 1479.[13] On the same date, respondents questioned the legality of the water rate increase before the National Water Resources Board (NWRB).[14]

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[8] *Id.* at 124-125.

[9] *Id.* at 126.

[10] *Id.* at 32.

[11] *Id.* at 127-132.

[12] *Id.* at 128-130.

[13] *Id.* at 28.

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

In its Order[15] dated March 3, 2003, the RTC denied petitioners' motion to dismiss. The RTC held there was no need to exhaust administrative remedies, because petitioners: (1) failed to comply with the legal requisites of hearing and notice; and (2) violated LOI No. 700 for prescribing a water rate increase of almost 100% from the previous rate. Petitioners' Motion for Reconsideration[16] was denied on March 31, 2003.[17]

On April 15, 2003, petitioners filed a Petition for *Certiorari*[18] with the CA, assailing the trial court orders for lack of jurisdiction. The CA affirmed the orders, upholding the RTC's jurisdiction and the propriety of respondents' recourse to the trial court notwithstanding the rule on the exhaustion of administrative remedies. Petitioners filed a Motion for Reconsideration,[19] which the CA denied.

Petitioners reiterate their arguments before this Court, alleging the impropriety of the respondents' recourse to the trial court considering their failure to exhaust administrative remedies. Thus, the sole issue for resolution is whether respondents' recourse to the trial court is proper despite their failure to exhaust administrative remedies.

At the outset, it must be clarified that the case at bar concerns a local water district's establishment of a rate increase. As can be gleaned from the material averments in the complaint below, respondents' allegations, that petitioners committed a patently illegal act by implementing a water rate increase beyond that prescribed by LOI No. 700 and that petitioners violated due process in implementing a rate not agreed upon during the public hearing, point to the conclusion that this controversy arose from the determination of the rate itself.

P.D. No. 198 as amended by P.D. No. 1479 provides for the administrative remedies regarding a review of water rates,

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[15] *Id.* at 156-157.

[16] *Id.* at 158-161.

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

[18] CA *rollo*, pp. 3-13.

[19] *Id.* at 163-169.

to determine whether a local water district complied with the legal requirements in establishing such rates:

> SEC. 11. The last paragraph of Section 63 of the same decree is hereby amended to read as follows:
>
> > The rates or charges established by such local district, after hearing shall have been conducted for the purpose, shall be subject to review by the Administration to establish compliance with the abovestated provisions. Said review of rates or charges shall be executory and enforceable after the lapse of seven calendar days from posting thereof in a public place in the locality of the water district, without prejudice to an appeal being taken therefrom by a water concessionaire to the [NWRB] whose decision thereon shall be appealable to the Office of the President. An appeal to the [NWRB] shall be perfected within thirty days after the expiration of the seven-day period of posting. The [NWRB] shall decide on appeal within thirty days from perfection.[20]

After LWUA reviews the rates established by a local water district, a water concessionaire may appeal the same to the NWRB. The NWRB's decision may then be appealed to the Office of the President.

Respondents failed to exhaust administrative remedies by their failure to appeal to the NWRB. Non-exhaustion of administrative remedies renders the action premature.[21] The Court has consistently reiterated the rationale behind the doctrine of exhaustion of administrative remedies:

> One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and

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[20] Executive Order No. 124-A, dated July 22, 1987, renamed the National Water Resources Council to the NWRB.

[21] *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141.

> that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so… It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.[22]

Respondents justify their failure to observe the administrative process due to the following grounds: (1) that petitioners' increase of the water rate is patently illegal; and (2) a denial of due process.

We are not convinced.

The argument of patent illegality is without merit. The first paragraph of LOI No. 700 provides that the LWUA shall:

> (f) Ensure that the water rates are not abruptly increased beyond the water users' ability to pay, seeing to it that each increase if warranted, does not exceed 60% of the current rate.[23]

The non-observance of the doctrine of exhaustion has been upheld in cases when the patent illegality of the assailed act is clear, undisputed, and more importantly, evident outright.[24] In these cases, the assailed act did not require the consideration of the existence and relevancy of specific surrounding circumstances and their relation to each other for the Court to conclude that the act was indeed patently illegal. In the case at bar, certain facts need to be resolved first, to determine whether petitioners' increase of the water rate is a patently illegal act.

The determination of the current rate from which to compute the allowable increase of 60% is a question of fact that cannot be properly threshed out before this Court. The NWRB must be given an opportunity to make a factual finding with respect to this question. This Court accords the factual findings of

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[22] *Sunville Timber Products, Inc. v. Abad*, G.R. No. 85502, February 24, 1992, 206 SCRA 482, 486-487.

[23] Letter of Instructions No. 700 (1978), Par. 1(f).

[24] *Celestial v. Cachopero*, 459 Phil. 903 (2003); *China Banking Corporation v. Members of the Board of Trustees, Home Development Mutual Fund*, G.R. No. 131787, May 19, 1999, 307 SCRA 443.

administrative agencies with utmost consideration because of the special knowledge and expertise gained by these quasi-judicial tribunals from handling specific matters falling under their jurisdiction.[25] Considering that the LWUA confirmed the Rate Schedule of Approved Water Rates for Merida Water District, a schedule that contains different rates that gradually increase, the determination of whether the computation of the percentage increase complies with the 60% limitation is a factual matter best left to the competence of the NWRB.

The argument of denial of due process deserves scant consideration. The non-observance of the doctrine of exhaustion has been recognized in cases where the party seeking outright judicial intervention was denied the opportunity to be heard in administrative proceedings.[26] In the case at bar, respondents were not denied the opportunity to be heard, as Merida Water District conducted a public hearing on October 10, 2001 regarding the increase of water rates.

The allegation of a denial of due process actually involves the question of whether the public hearing on October 10, 2001 complied with the legal requirement of conducting a public hearing prior to increasing water rates. The fifth paragraph of LOI No. 700 requires the water district concerned to conduct a public hearing prior to any increase in water rates.[27] The third paragraph of LOI No. 744 requires the LWUA and water districts to prepare a system of public consultation through hearings when considering increases in water rates.[28] Furthermore, Section 63 of P.D. No. 198, as amended by P.D. No. 1479 requires the following:

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[25] *Villanueva v. Court of Appeals*, G.R. No. 99357, January 27, 1992, 205 SCRA 537, 544-545.

[26] *Pagara v. Court of Appeals*, 325 Phil. 66 (1996); *Samahang Magbubukid ng Kapdula, Inc. v. Court of Appeals*, G.R. No. 103953, March 25, 1999, 305 SCRA 147.

[27] This provision states:

5. The water district concerned shall conduct public hearings prior to any proposed increase in water rates.

[28] This provision states:

> The rates or charges established by such local district, after hearing shall have been conducted for the purpose, shall be subject to review by the Administration to establish compliance with the abovestated provisions. Said review of rates or charges shall be executory and enforceable after the lapse of seven calendar days from posting thereof in a public place in the locality of the water district x x x.

When a local water district increases water rates, the law requires the district concerned to conduct a public hearing regarding these rates. The same rates are subject to review by the LWUA, which is tasked to determine whether the establishment of the rates complies with the law.[29] Thus, compliance with the public hearing requirement means that the rates presented in the hearing should be the same rates submitted to the LWUA for review and approval. Considering that there was no finding with regard to this question of fact, whether the rates presented in the hearing were the same rates approved by the LWUA, the NWRB must be given the opportunity to resolve this matter.

IN VIEW WHEREOF, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No.77141 dated January 30, 2004 and September 16, 2004, respectively, are *REVERSED* and *SET ASIDE*.

SO ORDERED.

Carpio, Azcuna, Reyes,[*] and *Leonardo-de Castro, JJ.*, concur.

> 3. The Local Water Utilities Administration and each Water District shall prepare a public education program which shall concentrate on the need and methods for water conservation, water rates, water facilities requirements and need for financing, and other related aspects of Water District operations. They shall, in addition, prepare a comprehensive program and system of public consultation, both formally in hearings and informally through an education program, when considering increases in water rates, particularly at the time when Water Districts initiate operation.

[29] *Marilao Water Consumers Association, Inc. v. Intermediate Appellate Court,* G.R. No. 72807, September 9, 1991, 201 SCRA 437, 449-450.

[*] Per Special Order No. 520, dated September 19, 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Ruben T. Reyes to replace Associate Justice Renato C. Corona, who is on official leave.

SECOND DIVISION

[G.R. Nos. 168578-79. September 30, 2008]

NIETO A. RACHO, *petitioner, vs.* **HON. PRIMO C. MIRO, in his capacity as Deputy Ombudsman for the Visayas, HON. VIRGINIA PALANCA-SANTIAGO, in her capacity as Ombudsman Director, and HON. ANTONIO T. ECHAVEZ, in his capacity as Presiding Judge of the Regional Trial Court — Cebu City, Branch 8,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OMBUDSMAN; GIVEN A WIDE LATITUDE OF INVESTIGATORY AND PROSECUTORY POWERS. — The prosecution of offenses committed by public officers is vested primarily in the OMB. For this purpose, the OMB has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989). Its discretion is freed from legislative, executive or judicial intervention to ensure that the OMB is insulated from any outside pressure and improper influence. Hence, unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and will respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the guardian of the integrity of the public service.

2. ID.; ID.; ID.; ID.; WHEN PLEA FOR REVIEW OF OMB'S RESOLUTION MAY BE ENTERTAINED. — The Ombudsman is empowered to determine whether there exists reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Such finding of probable cause is a finding of fact which is generally not reviewable by this Court. The only ground upon which a plea for review of the OMB's resolution may be entertained is an alleged grave abuse of discretion. By that phrase is meant the capricious and whimsical exercise of judgment equivalent to an excess or lack of jurisdiction. The abuse of discretion

must be so patent and so gross as to amount to an evasion of a positive duty; or to a virtual refusal to perform a duty enjoined by law; or to act at all in contemplation of law, as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; DETERMINATION. — Indeed, the determination of probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. It is enough that it is believed that the act or omission complained of constitutes the offense charged. The trial of a case is conducted precisely for the reception of evidence of the prosecution in support of the charge. A finding of probable cause merely binds the suspect to stand trial. It is not a pronouncement of guilt.

4. ID.; ID.; MOTION FOR REINVESTIGATION; CLARIFICATORY HEARING; OPTIONAL. — In *De Ocampo v. Secretary of Justice,* we ruled that a clarificatory hearing is not required during preliminary investigation. Rather than being mandatory, a clarificatory hearing is optional on the part of the investigating officer as evidenced by the use of the term "may" in Section 3(e) of Rule 112, thus: (e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. This rule applies equally to a motion for reinvestigation. As stated, the Office of the Ombudsman has been granted virtually plenary investigatory powers by the Constitution and by law. As a rule, the Office of the Ombudsman may, for every particular investigation, whether instigated by a complaint or on its own initiative, decide how best to pursue such investigation. In the present case, the OMB found it unnecessary to hold additional clarificatory hearings. Notably, we note that a hearing was conducted during preliminary investigation where petitioner invoked his right to remain silent and confront witnesses who may be presented against him, although there was none presented.

5. ID.; ID.; ID.; COMPLAINANT'S ACTIVE PARTICIPATION IS NO LONGER A MATTER OF RIGHT. — Besides, under

the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 07), particularly Rule 11, Section 7(a), in relation to Section 4(f), a complainant's active participation is no longer a matter of right during reinvestigation. Admittedly, technical rules of procedure and evidence are not strictly applied in administrative proceedings. Thus, it is settled that administrative due process cannot be fully equated with due process in its strict judicial sense.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; REQUIREMENTS OF DUE PROCESS SUBSTANTIALLY SATISFIED WHERE PETITIONER WAS GIVEN A CHANCE TO BE HEARD. —Clearly, the requirements of due process have been substantially satisfied in the instant case. In its Order dated December 22, 2004, the OMB warned petitioner that no further extension will be given such that if he fails to file a comment on December 28, 2004, the cases against him will be submitted for resolution. Even so, the OMB considered petitioner's belatedly-filed Comment and the documents attached therewith in its Reinvestigation Report. In our view, petitioner cannot successfully invoke deprivation of due process in this case, where as a party he was given the chance to be heard, with ample opportunity to present his side.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PUBLIC PROSECUTORS; MERELY QUASI-JUDICIAL OFFICERS. — Equally clear to us, there was no manifest abuse of discretion on the part of Director Palanca-Santiago for her refusal to inhibit herself in the reinvestigation. Even if a preliminary investigation resembles a realistic judicial appraisal of the merits of the case, public prosecutors could not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. They are not considered judges, by the nature of their functions, but merely quasi-judicial officers. Worth-stressing, one adverse ruling by itself would not prove bias and prejudice against a party sufficient to disqualify even a judge. Hence, absent proven allegations of specific conduct showing prejudice and hostility, we cannot impute grave abuse of discretion here on respondent director. To ask prosecutors to recuse themselves on reinvestigation upon every unfavorable ruling in a case would cause unwarranted delays in the prosecution of actions.

8. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* CERTIFIED TRUE COPY OF ASSAILED RESOLUTION; INDISPENSABLE TO AID APPELLATE COURTS IN RESOLVING PETITIONS. — Finally, we note that petitioner failed to attach a certified true copy of the assailed Resolution in OMB-C-C-03-0729-L in disregard of paragraph 2 of Section 1, Rule 65 on *certiorari.* As previously ruled, the requirement of providing appellate courts with certified true copies of the judgments or final orders that are the subjects of review is indispensable to aid them in resolving whether or not to give due course to petitions. This necessary requirement cannot be perfunctorily ignored, much less violated. In view, however, of the serious matters dealt with in this case, we opted to tackle the substantial merits hereof with least regard to technicalities.

APPEARANCES OF COUNSEL

A. Tan Zoleta & Partners Law Firm for petitioner.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court seeks the annulment of the Joint Order[1] dated April 1, 2005 of the Office of the Ombudsman (OMB) in the Visayas. The OMB had denied reconsideration of its Reinvestigation Report[2] in OMB-V-C-02-0240-E and its Resolution in OMB-C-C-03-0729-L, both dated January 10, 2005. Petitioner herein also assails both issuances of the OMB.

The factual antecedents of this case are as follows.

On November 9, 2001, DYHP *Balita* Action Team (DYHP) of the Radio Mindanao Network, Inc. addressed a letter[3] on

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[1] *Rollo,* pp. 32-37.

[2] *Id.* at 55-71.

[3] Records, p. 4.

behalf of an anonymous complainant to Deputy Ombudsman for the Visayas Primo C. Miro. The letter accused Nieto A. Racho, an employee of the Bureau of Internal Revenue (BIR)-Cebu, of having accumulated wealth disproportionate to his income. Photocopied bank certifications disclosed that Racho had a total deposit of ₱5,793,881.39 with three banks.

Pio R. Dargantes, the Graft Investigation Officer I (GIO) assigned to investigate the complaint, directed DYHP to submit a sworn statement of its witnesses. Instead, the latter filed a Manifestation[4] dated October 16, 2002 withdrawing its complaint for lack of witnesses. Consequently, GIO Dargantes dismissed the case. He ruled that the photocopied bank certifications did not constitute substantial evidence required in administrative proceedings.[5]

Then, in two separate Memoranda dated May 30, 2003,[6] Ombudsman Director Virginia Palanca-Santiago disapproved GIO Dargantes's Resolution. In OMB-V-A-02-0214-E, Director Palanca-Santiago held Racho administratively liable for falsification and dishonesty, and meted on him the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold office.[7] In OMB-V-C-02-0240-E, Director Palanca-Santiago found probable cause to charge Racho with falsification of public document under Article 171(4)[8] of the Revised Penal

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[4] *Id.* at 41.

[5] *Id.* at 59-61.

[6] *Rollo*, pp. 90-97 and 98-105.

[7] *Id.* at 97.

[8] ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prisión mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in a narration of facts;

x x x x x x x x x

Code.[9] The latter moved for reconsideration but it was denied by the Deputy Ombudsman.

On May 30, 2003, Racho was charged with falsification of public document, docketed as Criminal Case No. CBU-66458 before the Regional Trial Court (RTC) of Cebu City, Branch 8. The Information alleged:

> That on or about the 7th day of February, 2000, and for sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused NIETO A. RACHO, a public officer, being the Chief, Special Investigation Division, Bureau of Internal Revenue (BIR), Regional Office No. 13, Cebu City, in such capacity and committing the offense in relation to [his] office, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of his Statement of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections; and Identification of Relatives In The Government Service, as of December 31, 1999, by stating therein that his cash in bank is only FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency and that his assets minus his liabilities amounted only to TWO HUNDRED THREE THOUSAND SEVEN HUNDRED FIFTY-EIGHT PESOS (₱203,758.00), Philippine Currency, when in truth and in fact, said accused has BANK DEPOSITS or cash in banks amounting to FIVE MILLION SEVEN HUNDRED NINETY-THREE THOUSAND EIGHT HUNDRED ONE PESOS and 39/100 (₱5,793,801.39),[10] Philippine Currency, as herein shown:
>
> 1) Metropolitan Bank and Trust Company – Cebu, Tabunok Branch:
>
> | Unisa No. | Amount |
> |---|---|
> | 3-172-941-10 | ₱1,983,554.45 |
> | 3-172-941-11 | 949,341.82 |
> | Total — | ₱2,932,896.27 |
>
> 2) Philippine Commercial International Bank – Magallanes Branch, Cebu City:

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[9] *Rollo*, pp. 104-105.

[10] The total amount should be five million seven hundred ninety-three thousand eight hundred eighty-one pesos (₱5,793,881.39).

Account No.	Amount
Equalizer – 29449-29456	₱1,000,000.00
PCC Fund – 99-0095-0-0020-clf.b	200,000.00
Optimum Savings – 00-8953-06860-9	28,702.53
Total –	₱1,228,702.53

3) Bank of the Philippine Islands - Cebu (Mango) Branch, Gen. Maxilom Avenue, Cebu City:

Account No.	Amount
Gold Savings – 1023-2036-49	₱1,632,282.59

thus deliberately failed to disclose an important fact of which he has the legal obligation to do so as specifically mandated under Section 8 of Republic Act No. 6713 (The Norms of Conduct and Ethical Standards for Public Officials and Employees) and Section 7 of Republic Act No. 3019, As Amended (The Anti-Graft and Corrupt Practices Act), thereby making untruthful statement in a narration of facts.

CONTRARY TO LAW.[11]

Racho appealed the administrative case and filed a petition for *certiorari* under Rule 65 with the Court of Appeals to question the ruling in OMB-V-C-02-0240-E. In a Decision[12] dated January 26, 2004, the appellate court annulled both Memoranda and ordered a reinvestigation of the cases against petitioner. Thereafter, petitioner filed a Motion to Dismiss[13] dated July 21, 2004. The same was denied for lack of merit in an Order[14] dated August 24, 2004.

On reinvestigation, petitioner submitted a Comment[15] dated January 4, 2005 along with supporting documents. On January

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[11] Records, pp. 71-72.

[12] *Rollo*, pp. 73-79. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes concurring.

[13] Records, pp. 82-83.

[14] *Id.* at 94.

[15] *Id.* at 110-112.

10, 2005, the OMB issued the assailed Reinvestigation Report, the dispositive portion of which states:

> With all the foregoing, undersigned finds no basis to change, modify nor reverse her previous findings that there is probable cause for the crime of FALSIFICATION OF PUBLIC DOCUMENT, defined and penalized under Article 171 of the Revised Penal Code, against respondent Nieto A. Racho for making untruthful statements in a narration of facts in his SALN. As there are additional facts established during the reinvestigation, re: failure of Mr. Racho to reflect his business connections, then the Information filed against him should be amended to include the same. Let this Amended Information be returned to the court for further proceedings.
>
> SO RESOLVED.[16]

Petitioner sought reconsideration but was denied by the OMB in the Joint Order dated April 1, 2005. It decreed:

> The Motion for Reconsideration of respondent did not adduce any new evidence, which would warrant a reversal of our findings; neither did it present proof of errors of law or irregularities being committed.
>
> This being so, this Motion for Reconsideration of respondent is hereby DENIED. The findings of this Office as contained in the two (2) REINVESTIGATION REPORTS (in OMB-V-C-02-0240-E and OMB-V-A-02-0214-E) and RESOLUTION (in OMB-C-C-03-0729-L) stand.
>
> SO ORDERED.[17]

In the instant petition, Racho cites the following issues:

> I.
>
> WHETHER OR NOT RESPONDENT OMBUDSMAN DIRECTOR, AS WELL AS RESPONDENT DEPUTY OMBUDSMAN FOR THE VISAYAS WHO SANCTIONED HER DEED, COMMITTED GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE REFUSED OR FAILED TO INHIBIT HERSELF FROM CONDUCTING THE SUPPOSED "*REINVESTIGATION*";

[16] *Rollo*, p. 71.

[17] *Id.* at 36-37.

II.

WHETHER OR NOT HEREIN PETITION[ER] WAS DENIED DUE PROCESS OF LAW IN THE SUPPOSED "*REINVESTIGATION*";

III.

WHETHER OR NOT RESPONDENT OMBUDSMAN DIRECTOR, AS WELL AS RESPONDENT DEPUTY OMBUDSMAN FOR THE VISAYAS WHO SANCTIONED HER DEED, COMMITTED GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE HELD THAT PETITIONER'S MOTION FOR RECONSIDERATION DID NOT ADDUCE PROOF OF ANY IRREGULARITY IN THE "*REINVESTIGATION*"; AND

IV.

WHETHER OR NOT BY REASON OF THIS HONORABLE COURT'S INHERENT POWER TO DO ALL THINGS REASONABLY NECESSARY FOR THE ADMINISTRATION OF JUSTICE, EVEN IF NOT PRAYED FOR IN THE INSTANT PETITION, THE SUBJECT OMBUDSMAN CASES OMB-V-C-02-0240-E AND OMB-C-C-03-0729-L CAN BE DISMISSED.[18]

Stated simply, the issues now for determination are as follows: (1) Whether Ombudsman Director Palanca-Santiago gravely abused her discretion when she did not inhibit herself in the reinvestigation; (2) Whether petitioner was denied due process of law on reinvestigation; and (3) Whether there was probable cause to hold petitioner liable for falsification under Article 171(4) of the Revised Penal Code.

Petitioner ascribes grave abuse of discretion on the part of Ombudsman Director Palanca-Santiago since she did not inhibit herself in the reinvestigation. He claims a denial of due process because of the fact that Director Palanca-Santiago handled the preliminary investigation as well as the reinvestigation of the cases. In both instances, the latter found probable cause to indict petitioner for falsification. For this reason, petitioner believes that Director Palanca-Santiago has turned hostile to him. He insists that respondent director had lost the cold neutrality of

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[18] *Id.* at 223-224.

an impartial judge when she found probable cause against him on preliminary investigation. Petitioner penultimately questions the haste with which the reinvestigation was concluded and the lack of hearing thereon. In essence, he insists on the dismissal of his cases before the OMB.

On November 6, 2006, the OMB thru the Office of the Special Prosecutor (OSP) filed a Memorandum[19] dated October 23, 2006 for respondents. The OSP avers that the instant petition stated no cause of action since it did not implead the Hon. Ombudsman Simeon Marcelo as a respondent. That Director Palanca-Santiago resolved the investigation adverse to petitioner, the OSP contends, did not necessarily indicate partiality. The OSP explains that the Reinvestigation Report was merely recommendatory and the finding of probable cause was done in line with official duty. It points out further that petitioner failed to cite specific acts by which Director Palanca-Santiago showed hostility towards him. Finally, the OSP charges petitioner with forum shopping since he had already raised the issue of respondent director's impartiality in his petition assailing the Memorandum dated May 30, 2003, before the Court of Appeals.

After considering the contentions and submissions of the parties, we are in agreement that the instant petition lacks merit.

The prosecution of offenses committed by public officers is vested primarily in the OMB. For this purpose, the OMB has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770[20] (The Ombudsman Act of 1989). Its discretion is freed from legislative, executive or judicial intervention to ensure that the OMB is insulated from any outside pressure and improper influence.[21] Hence, unless there are good and compelling reasons to do so,

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[19] *Id.* at 247-266.

[20] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES, approved on December 13, 1989.

[21] *Presidential Commission on Good Government (PCGG) v. Desierto*, G.R. No. 139675, July 21, 2006, 496 SCRA 112, 121.

the Court will refrain from interfering with the exercise of the Ombudsman's powers, and will respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the guardian of the integrity of the public service.[22]

The Ombudsman is empowered to determine whether there exists reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[23] Such finding of probable cause is a finding of fact which is generally not reviewable by this Court.[24] The only ground upon which a plea for review of the OMB's resolution may be entertained is an alleged grave abuse of discretion. By that phrase is meant the capricious and whimsical exercise of judgment equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of a positive duty; or to a virtual refusal to perform a duty enjoined by law; or to act at all in contemplation of law, as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[25]

Considering the facts and circumstances of this case, we find no grave abuse of discretion on the part of respondents. As already well-stated, as long as substantial evidence supports the Ombudsman's ruling, his decision will not be overturned.[26] Here, the finding of the Ombudsman that there was probable cause to hold petitioner liable for falsification by making untruthful statements in a narration of facts rests on substantial evidence.

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[22] *Id*.

[23] *Id*.

[24] *Galario v. Office of the Ombudsman (Mindanao)*, G.R. No. 166797, July 10, 2007, 527 SCRA 190, 205.

[25] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322, 337.

[26] *Presidential Commission on Good Government (PCGG) v. Desierto*, *supra* note 21, at 122.

The OMB evaluated petitioner's Statement of Assets, Liabilities and Networth (SALN) for the year 1999[27] against certified true copies of his bank deposits during the same year. In his SALN, petitioner declared ₱15,000 cash in bank as of December 31, 1999. The bank certifications of petitioner's deposits, however, confirmed that he had an aggregate balance of ₱5,793,881.39 in his accounts with three banks. Original certifications dated June 17, 1999 issued by the Bank of the Philippine Islands (BPI)[28] and Equitable PCI Bank (Equitable PCIB)[29] revealed accounts for ₱1,632,282.59 and ₱1,228,702.53, respectively. A photocopied certification dated June 16, 1999 from Metrobank[30] indicated a deposit of ₱2,932,896.27.

The OMB did not accord weight to the Joint Affidavit[31] submitted by petitioner. In said Affidavit, Vieto and Dean Racho, petitioner's brothers, stated that they entrusted to petitioner ₱1,390,000 and ₱1,950,000 respectively. On the other hand, petitioner's nephew, Henry Racho, claimed that he delivered the amount of ₱1,400,000 to petitioner. These sums were purportedly their contribution as stockholders of Angelsons Lending and Investors, Inc. (Angelsons) and Nal Pay Phone Services (NPPS) — businesses managed by the spouses Racho. Ironically, Dean Racho was not listed as a stockholder of the lending company. Moreover, the Articles of Incorporation[32] of Angelsons reflected that Vieto, Henry and the spouses Racho individually paid only ₱12,500 of the subscribed shares of ₱50,000 each. Petitioner did not present proofs of succeeding contributions made and their amounts. Curiously, affiants allegedly tendered their additional contributions during family reunions.[33] Neither did the affiants describe the extent of their interest in NPPS.

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[27] Records, p. 12.

[28] *Id.* at 7.

[29] *Id.* at 6.

[30] *Id.* at 5.

[31] *Id.* at 113-115.

[32] *Id.* at 117-123.

[33] *Id.* at 114.

Petitioner merely presented NPPS' Certificate of Registration of Business Name[34] secured by his wife Lourdes B. Racho. Yet, said certificate did not operate as a license to engage in any kind of business, much more a proof of its establishment and operation. Even assuming that said businesses exist, petitioner should have similarly reported his interests therein in his SALN.

Petitioner argues that his culpability should not be ascertained on the basis of photocopied bank certifications. Apparent from the records, however, is the Order[35] dated August 27, 2004 of the OMB which required petitioner to comment on the *certified true copies* of bank certifications issued by BPI and Equitable PCIB. All the same, even if we exclude his deposit in Metrobank, a significant disparity between his declared cash on hand of ₱15,000 and cash in bank of ₱2,860,985.12 subsists when compared to his total bank deposits duly certified for the same year.

Indeed, the determination of probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.[36] It is enough that it is believed that the act or omission complained of constitutes the offense charged. The trial of a case is conducted precisely for the reception of evidence of the prosecution in support of the charge.[37] A finding of probable cause merely binds the suspect to stand trial. It is not a pronouncement of guilt.[38]

Moreover, we are unable to agree with petitioner's contention that he was denied due process when no hearing was conducted on his motion for reinvestigation. In *De Ocampo v. Secretary of Justice*,[39] we ruled that a clarificatory hearing is not required during preliminary investigation. Rather than being mandatory,

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[34] *Id.* at 133.

[35] *Id.* at 95.

[36] *Galario v. Office of the Ombudsman (Mindanao), supra* note 24, at 204.

[37] *Raro v. Sandiganbayan*, G.R. No. 108431, July 14, 2000, 335 SCRA 581, 605.

[38] *Galario v. Office of the Ombudsman (Mindanao*), *supra* note 36.

[39] G.R. No. 147932, January 25, 2006, 480 SCRA 71.

a clarificatory hearing is optional on the part of the investigating officer as evidenced by the use of the term "may" in Section 3(e) of Rule 112, thus:

> (e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine.[40]

This rule applies equally to a motion for reinvestigation. As stated, the Office of the Ombudsman has been granted virtually plenary investigatory powers by the Constitution and by law. As a rule, the Office of the Ombudsman may, for every particular investigation, whether instigated by a complaint or on its own initiative, decide how best to pursue such investigation.[41] In the present case, the OMB found it unnecessary to hold additional clarificatory hearings. Notably, we note that a hearing was conducted during preliminary investigation where petitioner invoked his right to remain silent and confront witnesses who may be presented against him, although there was none presented.

Besides, under the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 07), particularly Rule II, Section 7(a),[42] in relation to Section 4(f),[43] a complainant's

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[40] *Id.* at 80.

[41] *Dimayuga v. Office of the Ombudsman*, G.R. No. 129099, July 20, 2006, 495 SCRA 461, 469.

[42] Sec. 7. Motion for reconsideration.

> a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information has already been filed in court. (As amended by Administrative Order No. 15 entitled "Re: Amendment of Section 7, Rule II of Administrative Order No. 07," signed by Tanodbayan Aniano A. Desierto on February 16, 2001.)
>
> x x x x x x x x x

[43] Sec. 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted

active participation is no longer a matter of right during reinvestigation. Admittedly, technical rules of procedure and evidence are not strictly applied in administrative proceedings. Thus, it is settled that administrative due process cannot be fully equated with due process in its strict judicial sense.[44]

Petitioner complains of how quickly the reinvestigation proceedings were terminated. The OMB issued the Reinvestigation Report on January 10, 2005, barely a week after petitioner filed his Comment dated January 4, 2005. Thus, the latter surmises that no reinvestigation was actually made. However, a review of the facts would reveal that after the Court of Appeals directed a reinvestigation of the case, the OMB issued an Order dated August 27, 2004 requiring petitioner to submit a comment within 10 days from receipt. The latter failed to comply. On December 1, 2004, petitioner filed a Motion for Extension of Time to File Comment[45] of 30 days; the OMB granted the same for 15 days. On December 17, 2004, petitioner asked for another extension of 30 days reckoned from December 19, 2004 within which to submit a comment; the OMB gave him up to December 28, 2004. On December 28, 2004, petitioner moved for a third extension. Then, without waiting for the OMB's resolution of

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in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

x x x x x x x x x

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be, conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

x x x x x x x x x

[44] *Espinosa v. Office of the Ombudsman*, G.R. No. 135775, October 19, 2000, 343 SCRA 744, 753.

[45] Records, pp. 96-98.

his latest motion, petitioner filed his Comment on January 4, 2005. But with his repeated motions for extensions, he already contributed to palpable delay in the completion of the reinvestigation.

Clearly, the requirements of due process have been substantially satisfied in the instant case.[46] In its Order[47] dated December 22, 2004, the OMB warned petitioner that no further extension will be given such that if he fails to file a comment on December 28, 2004, the cases against him will be submitted for resolution. Even so, the OMB considered petitioner's belatedly-filed Comment and the documents attached therewith in its Reinvestigation Report. In our view, petitioner cannot successfully invoke deprivation of due process in this case, where as a party he was given the chance to be heard, with ample opportunity to present his side.[48]

Equally clear to us, there was no manifest abuse of discretion on the part of Director Palanca-Santiago for her refusal to inhibit herself in the reinvestigation. Even if a preliminary investigation resembles a realistic judicial appraisal of the merits of the case,[49] public prosecutors could not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged.[50] They are not considered judges, by the nature of their functions, but merely quasi-judicial officers.[51] Worth-stressing, one adverse ruling by itself would not prove bias and prejudice against a party sufficient to disqualify even a judge.[52] Hence, absent proven

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[46] *Filipino v. Macabuhay*, G.R. No. 158960, November 24, 2006, 508 SCRA 50, 59.

[47] Records, pp. 100-101.

[48] *Filipino v. Macabuhay, supra* note 46, at 58.

[49] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, 369 SCRA 293, 301.

[50] *Gallardo v. People*, G.R. No. 142030, April 21, 2005, 456 SCRA 494, 507.

[51] *Sales v. Sandiganbayan, supra* note 49, at 302.

[52] *Republic v. Gingoyon*, G.R. No. 166429, December 19, 2005, 478 SCRA 474, 543.

allegations of specific conduct showing prejudice and hostility, we cannot impute grave abuse of discretion here on respondent director. To ask prosecutors to recuse themselves on reinvestigation upon every unfavorable ruling in a case would cause unwarranted delays in the prosecution of actions.

Finally, we note that petitioner failed to attach a certified true copy of the assailed Resolution in OMB-C-C-03-0729-L in disregard of paragraph 2[53] of Section 1, Rule 65 on *certiorari*. As previously ruled, the requirement of providing appellate courts with certified true copies of the judgments or final orders that are the subjects of review is indispensable to aid them in resolving whether or not to give due course to petitions. This necessary requirement cannot be perfunctorily ignored, much less violated.[54] In view, however, of the serious matters dealt with in this case, we opted to tackle the substantial merits hereof with least regard to technicalities.

WHEREFORE, the instant petition is *DISMISSED* for lack of merit. The Regional Trial Court of Cebu City, Branch 8 is hereby *ORDERED* to proceed with the trial of Criminal Case No. CBU-66458 against petitioner.

Costs against petitioner.

SO ORDERED.

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

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[53] SECTION 1. *Petition for certiorari.* – ….

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[54] *Go v. Court of Appeals*, G.R. No. 163745, August 24, 2007, 531 SCRA 158, 166.

THIRD DIVISION

[G.R. No. 168852. September 30, 2008]

SHARICA MARI L. GO-TAN, *petitioner, vs.* **SPOUSES PERFECTO C. TAN and JUANITA L. TAN,** *respondents.*[*]

SYLLABUS

1. CRIMINAL LAW; SPECIAL LAWS; VIOLENCE AGAINST WOMEN AND THEIR CHILDREN; DEFINITION. — Section 3 of R.A. No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," defines ''[v]iolence against women and their children'' as "any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty."

2. ID.; ID.; ID.; APPLICATION OF CONSPIRACY UNDER THE REVISED PENAL CODE, NOT PRECLUDED. — While the said provision provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the RPC. Indeed, Section 47 of R.A. No. 9262 expressly provides for the suppletory application of the RPC, thus: SEC. 47. *Suppletory Application.* — For purposes of this Act, the **Revised Penal Code** and other applicable laws, shall have **suppletory application**. Parenthetically, Article 10 of the RPC provides: ART. 10. *Offenses not subject to the provisions of this Code*. — Offenses which are or in the future may be punishable under special laws are not subject to

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[*] The present petition impleaded the Court of Appeals as respondent. Pursuant to Section 4, Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

the provisions of this Code. **This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.** Hence, legal principles developed from the Penal Code may be applied in a supplementary capacity to crimes punished under special laws, such as R.A. No. 9262, in which the special law is silent on a particular matter.

3. ID.; ID.; ID.; ID.; SECTION 5 OF R.A. NO. 9262 EXPRESSLY RECOGNIZES THAT THE ACTS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN MAY BE COMMITTED BY AN OFFENDER THROUGH ANOTHER. — It must be further noted that Section 5 of R.A. No. 9262 expressly recognizes that the acts of violence against women and their children may be committed by an offender through another, thus: SEC. 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts: x x x (h) Engaging in purposeful, knowing, or reckless conduct, personally **or through another**, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts: (1) Stalking or following the woman or her child in public or private places; (2) Peering in the window or lingering outside the residence of the woman or her child; (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will; (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and (5) Engaging in any form of harassment or violence; x x x.

4. ID.; ID.; ID.; ID.; PROTECTION ORDERS THAT MAY BE ISSUED MAY INCLUDE INDIVIDUALS OTHER THAN THE OFFENDING HUSBAND. — In addition, the protection order that may be issued for the purpose of preventing further acts of violence against the woman or her child may include individuals other than the offending husband, thus: SEC. 8. *Protection Orders.* —x x x The protection orders that may be issued under this Act shall include any, some or all of the following reliefs: (a) Prohibition of the respondent from threatening to commit or committing, personally or **through another**, any of the acts mentioned in Section 5 of this Act; (b) Prohibition of the respondent from harassing, annoying,

telephoning, contacting or otherwise communicating with the petitioner, directly or **indirectly**; x x x

5. ID.; ID.; ID.; SECTION 4 OF R.A. NO. 9262 CALLS FOR LIBERAL CONSTRUCTION OF THE LAW. — Finally, Section 4 of R.A. No. 9262 calls for a liberal construction of the law, thus: SEC. 4. *Construction*. — This Act shall be **liberally construed** to promote the protection and safety of victims of violence against women and their children. It bears mention that the intent of the statute is the law and that this intent must be effectuated by the courts. In the present case, the express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — the protection and safety of victims of violence against women and children.

APPEARANCES OF COUNSEL

Alfred Joseph T. Jamora for petitioner.
Jeanie S. Pulido for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution[1] dated March 7, 2005 of the Regional Trial Court (RTC), Branch 94, Quezon City in Civil Case No. Q-05-54536 and the RTC Resolution[2] dated July 11, 2005 which denied petitioner's Verified Motion for Reconsideration.

The factual background of the case:

On April 18, 1999, Sharica Mari L. Go-Tan (petitioner) and Steven L. Tan (Steven) were married.[3] Out of this union, two

[1] Penned by Judge Romeo F. Zamora, records, p. 209.

[2] *Id.* at 501.

[3] Records, p. 21.

female children were born, Kyra Danielle[4] and Kristen Denise.[5] On January 12, 2005, barely six years into the marriage, petitioner filed a Petition with Prayer for the Issuance of a Temporary Protective Order (TPO)[6] against Steven and her parents-in-law, Spouses Perfecto C. Tan and Juanita L. Tan (respondents) before the RTC. She alleged that Steven, in conspiracy with respondents, were causing verbal, psychological and economic abuses upon her in violation of Section 5, paragraphs (e)(2)(3)(4), (h)(5), and (i)[7] of Republic Act (R.A.) No.

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[4] *Id.* at 22.

[5] *Id.* at 23.

[6] *Id.* at 1.

[7] SEC. 5. *Acts of Violence Against Women and Their Children*. - The crime of violence against women and their children is committed through any of the following acts:

x x x x x x x x x

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or child's movement or conduct:

x x x x x x x x x

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity, or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

x x x x x x x x x

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

x x x x x x x x x

9262,[8] otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

On January 25, 2005, the RTC issued an Order/Notice[9] granting petitioner's prayer for a TPO.

On February 7, 2005, respondents filed a Motion to Dismiss with Opposition to the Issuance of Permanent Protection Order *Ad Cautelam* and Comment on the Petition,[10] contending that the RTC lacked jurisdiction over their persons since, as parents-in-law of the petitioner, they were not covered by R.A. No. 9262.

On February 28, 2005, petitioner filed a Comment on Opposition[11] to respondents' Motion to Dismiss arguing that respondents were covered by R.A. No. 9262 under a liberal interpretation thereof aimed at promoting the protection and safety of victims of violence.

On March 7, 2005, the RTC issued a Resolution[12] dismissing the case as to respondents on the ground that, being the parents-in-law of the petitioner, they were not included/covered as respondents under R.A. No. 9262 under the well-known rule of law "*expressio unius est exclusio alterius.*"[13]

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(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

[8] Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES."

[9] Records, p. 26.

[10] Records, p. 36.

[11] *Id.* at 147.

[12] *Id.* at 209.

[13] Latin maxim meaning "The expression of one thing is the exclusion of another." (*San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees*

On March 16, 2005, petitioner filed her Verified Motion for Reconsideration[14] contending that the doctrine of necessary implication should be applied in the broader interests of substantial justice and due process.

On April 8, 2005, respondents filed their Comment on the Verified Motion for Reconsideration[15] arguing that petitioner's liberal construction unduly broadened the provisions of R.A. No. 9262 since the relationship between the offender and the alleged victim was an essential condition for the application of R.A. No. 9262.

On July 11, 2005, the RTC issued a Resolution[16] denying petitioner's Verified Motion for Reconsideration. The RTC reasoned that to include respondents under the coverage of R.A. No. 9262 would be a strained interpretation of the provisions of the law.

Hence, the present petition on a pure question of law, to wit:

WHETHER OR NOT RESPONDENTS-SPOUSES PERFECTO & JUANITA, PARENTS-IN-LAW OF SHARICA, MAY BE INCLUDED IN THE PETITION FOR THE ISSUANCE OF A PROTECTIVE ORDER, IN ACCORDANCE WITH REPUBLIC ACT NO. 9262, OTHERWISE KNOWN AS THE "ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004".[17]

Petitioner contends that R.A. No. 9262 must be understood in the light of the provisions of Section 47 of R.A. No. 9262 which explicitly provides for the suppletory application of the Revised Penal Code (RPC) and, accordingly, the provision on "conspiracy" under Article 8 of the RPC can be suppletorily applied to R.A. No. 9262; that Steven and respondents had

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Union-Pambansang Diwa ng Manggagawang Pilipino, G.R. No. 171153, September 12, 2007, 533 SCRA 125, 152).

[14] Records, p. 316.

[15] *Id.* at 376.

[16] *Id.* at 510 .

[17] *Rollo*, p. 8.

community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically; that respondents should be included as indispensable or necessary parties for complete resolution of the case.

On the other hand, respondents submit that they are not covered by R.A. No. 9262 since Section 3 thereof explicitly provides that the offender should be related to the victim only by marriage, a former marriage, or a dating or sexual relationship; that allegations on the conspiracy of respondents require a factual determination which cannot be done by this Court in a petition for review; that respondents cannot be characterized as indispensable or necessary parties, since their presence in the case is not only unnecessary but altogether illegal, considering the non-inclusion of in-laws as offenders under Section 3 of R.A. No. 9262.

The Court rules in favor of the petitioner.

Section 3 of R.A. No. 9262 defines ''[v]iolence against women and their children'' as "any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty."

While the said provision provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the RPC.

Indeed, Section 47 of R.A. No. 9262 expressly provides for the suppletory application of the RPC, thus:

SEC. 47. *Suppletory Application*. — For purposes of this Act, the **Revised Penal Code** and other applicable laws, shall have **suppletory application.** (Emphasis supplied)

Parenthetically, Article 10 of the RPC provides:

ART. 10. *Offenses not subject to the provisions of this Code*. — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. **This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.** (Emphasis supplied)

Hence, legal principles developed from the Penal Code may be applied in a supplementary capacity to crimes punished under special laws, such as R.A. No. 9262, in which the special law is silent on a particular matter.

Thus, in *People v. Moreno*,[18] the Court applied suppletorily the provision on subsidiary penalty under Article 39 of the RPC to cases of violations of Act No. 3992, otherwise known as the "Revised Motor Vehicle Law," noting that the special law did not contain any provision that the defendant could be sentenced with subsidiary imprisonment in case of insolvency.

In *People v. Li Wai Cheung*,[19] the Court applied suppletorily the rules on the service of sentences provided in Article 70 of the RPC in favor of the accused who was found guilty of multiple violations of R.A. No. 6425, otherwise known as the "Dangerous Drugs Act of 1972," considering the lack of similar rules under the special law.

In *People v. Chowdury*,[20] the Court applied suppletorily Articles 17, 18 and 19 of the RPC to define the words "principal," "accomplices" and "accessories" under R.A. No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," because said words were not defined therein, although the special law referred to the same terms in enumerating the persons liable for the crime of illegal recruitment.

[18] 60 Phil. 712 (1934).

[19] G.R. Nos. 90440-42, October 13, 1992, 214 SCRA 504.

[20] G.R. Nos. 129577-80, February 15, 2000, 325 SCRA 572.

In *Yu v. People,*[21] the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39 of the RPC to *Batas Pambansa (B.P.) Blg*. 22, otherwise known as the "Bouncing Checks Law," noting the absence of an express provision on subsidiary imprisonment in said special law.

Most recently, in *Ladonga v. People,*[22] the Court applied suppletorily the principle of conspiracy under Article 8 of the RPC to *B.P. Blg*. 22 in the absence of a contrary provision therein.

With more reason, therefore, the principle of conspiracy under Article 8 of the RPC may be applied suppletorily to R.A. No. 9262 because of the express provision of Section 47 that the RPC shall be supplementary to said law. Thus, general provisions of the RPC, which by their nature, are necessarily applicable, may be applied suppletorily.

Thus, the principle of conspiracy may be applied to R.A. No. 9262. For once conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the conspirators, and the precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[23]

It must be further noted that Section 5 of R.A. No. 9262 expressly recognizes that the acts of violence against women and their children may be committed by an offender through another, thus:

SEC. 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

x x x x x x x x x

[21] G.R. No. 134172, September 20, 2004, 438 SCRA 431.

[22] G.R. No. 141066, February 17, 2005, 451 SCRA 673.

[23] *Ladonga v. People, supra* note 22; *People v. Felipe,* G.R. No. 142505, December 11, 2003, 418 SCRA 146, 176; *People v. Julianda, Jr.,* G.R. No. 128886, November 23, 2001, 370 SCRA 448, 469; *People v. Quinicio,* G.R. No. 142430, September 13, 2001, 365 SCRA 252, 266.

(h) Engaging in purposeful, knowing, or reckless conduct, personally **or through another**, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence; x x x. (Emphasis supplied)

In addition, the protection order that may be issued for the purpose of preventing further acts of violence against the woman or her child may include individuals other than the offending husband, thus:

SEC. 8. *Protection Orders*. — x x x The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or **through another**, any of the acts mentioned in Section 5 of this Act;

(b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or **indirectly**; x x x (Emphasis supplied)

Finally, Section 4 of R.A. No. 9262 calls for a liberal construction of the law, thus:

SEC. 4. *Construction*. — This Act shall be **liberally construed** to promote the protection and safety of victims of violence against women and their children. (Emphasis supplied)

It bears mention that the intent of the statute is the law[24] and that this intent must be effectuated by the courts. In the present case, the express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — the protection and safety of victims of violence against women and children.

Thus, contrary to the RTC's pronouncement, the maxim "*expressio unios est exclusio alterius*" finds no application here. It must be remembered that this maxim is only an "ancillary rule of statutory construction." It is not of universal application. Neither is it conclusive. It should be applied only as a means of discovering legislative intent which is not otherwise manifest and should not be permitted to defeat the plainly indicated purpose of the legislature.[25]

The Court notes that petitioner unnecessarily argues at great length on the attendance of circumstances evidencing the conspiracy or connivance of Steven and respondents to cause verbal, psychological and economic abuses upon her. However, conspiracy is an evidentiary matter which should be threshed out in a full-blown trial on the merits and cannot be determined in the present petition since this Court is not a trier of facts.[26] It is thus premature for petitioner to argue evidentiary matters since this controversy is centered only on the determination of

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[24] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006, 504 SCRA 90, 101; *Eugenio v. Drilon*, 322 Phil. 112 (1996); *Philippine National Bank v. Office of the President*, 322 Phil. 6, 14 (1996); *Ongsiako v. Gamboa*, 86 Phil. 50, 57 (1950); *Torres v. Limjap*, 56 Phil. 141, 145-146 (1931).

[25] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 78; *Dimaporo v. Mitra, Jr.*, G.R. No. 96859, October 15, 1991, 202 SCRA 779, 792; *Primero v. Court of Appeals*, G.R. Nos. 48468-69, November 22, 1989, 179 SCRA 542, 548-549.

[26] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441; *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85.

whether respondents may be included in a petition under R.A. No. 9262. The presence or absence of conspiracy can be best passed upon after a trial on the merits.

Considering the Court's ruling that the principle of conspiracy may be applied suppletorily to R.A. No. 9262, the Court will no longer delve on whether respondents may be considered indispensable or necessary parties. To do so would be an exercise in superfluity.

WHEREFORE, the instant petition is *GRANTED*. The assailed Resolutions dated March 7, 2005 and July 11, 2005 of the Regional Trial Court, Branch 94, Quezon City in Civil Case No. Q-05-54536 are hereby *PARTLY REVERSED and SET ASIDE* insofar as the dismissal of the petition against respondents is concerned.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170569. September 30, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORBERTO MATEO *Y* DIZON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF IS GENERALLY ACCORDED GREAT WEIGHT. — It has often been said, to the point of being repetitive, that when the credibility of the witness is in issue, the trial court's assessment

is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. The RTC has the unique advantage of monitoring and observing at close range the demeanor, deportment and conduct of the witnesses as they regale the trial court with their testimonies. In this case, the RTC found AAA's testimony credible and sincere and gave it full probative weight. We find no cogent reason to overturn the CA's affirmance of such finding.

2. CRIMINAL LAW; RAPE; ELEMENTS; GRAVAMEN THEREOF IS CARNAL KNOWLEDGE OF A WOMAN AGAINST HER WILL OR WITHOUT HER CONSENT. — Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659 was the law applicable at the time of the rape. It provides: Art. 335 *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances. 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under 12 years of age or is demented. x x x The gravamen of rape is carnal knowledge of a woman against her will or without her consent.

3. REMEDIAL LAW; EVIDENCE; PHYSICAL EVIDENCE; TESTIMONY; WHEN THE VICTIM'S TESTIMONY OF HER VIOLATION IS CORROBORATED BY THE PHYSICAL EVIDENCE OF PENETRATION, THERE IS SUFFICIENT FOUNDATION FOR CONCLUDING THERE WAS CARNAL KNOWLEDGE. — Torno corroborated AAA's testimony on the carnal knowledge as she actually saw appellant pumping on top of AAA. Also, the medico-legal officer testified and presented his undisputed findings of the presence of a deep, fresh hymenal laceration which further established that AAA had been sexually penetrated. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.

4. CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE; NOT AN ESSENTIAL ELEMENT OF FELONY. — Appellant's claim that the records do not show any sign or presence of struggle is irrelevant. Physical resistance is not an essential

element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety. It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused. Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. Also, the inequality of their physical strength made any resistance on AAA'S part futile.

5. ID.; ID.; ID.; SETTLED RULE THAT THE FORCE CONTEMPLATED BY LAW IN THE COMMISSION OF RAPE IS RELATIVE, DEPENDING ON THE AGE, SIZE AND STRENGTH OF THE PARTIES. — Moreover, the fact that there was no weapon used by the accused does not rule out force in the rape committed. It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size and strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime. AAA was threatened that she would be killed, which created a fear in her mind which caused her to submit to appellant's bestial lust. AAA, a minor, cannot be expected to react under such circumstances like a mature woman. Because of her immaturity, she can be easily intimidated, subdued, and terrified by a strong man like appellant. Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.

6. ID.; ID.; ID.; STATUTORY RAPE; SEXUAL INTERCOURSE WITH A WOMAN WHO IS A MENTAL RETARDATE

CONSTITUTES STATUTORY RAPE. — During the trial, the prosecution presented evidence tending to show that AAA was a mental retardate. It is settled that sexual intercourse with a woman who is a mental retardate constitute statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction. However, this fact was not alleged in the complaint filed in this case and therefore cannot be the basis for conviction.

7. ID.; ID.; ID.; PROCURED THROUGH FORCE OR INTIMIDATION; PENALTY. — Article 335 of the Revised Penal Code as amended by Section 11 of R.A. No. 7659 provides the penalty of *reclusion perpetua* for the carnal knowledge of a woman procured through force or intimidation and without any other attendant circumstance. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is an appeal from the Decision[1] dated September 30, 2005 of the Court of Appeals (CA) affirming with modification the Decision[2] of the Regional Trial Court (RTC), Pasig City, Branch 160, finding appellant guilty of rape and sentencing him to *reclusion perpetua*.

In a Complaint dated November 2, 1995, AAA,[3] assisted by her father, BBB, charged Norberto Mateo (appellant) with rape

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[1] Penned by Justice Mariano C. del Castillo, concurred in by Justices Portia Aliño-Hormachuelos and Magdangal M. de Leon, *rollo*, pp. 3-13.

[2] Penned by Judge Mariano M. Umali; CA *rollo*, pp. 15-29.

[3] The real name of the victim is withheld pursuant to Republic Act No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and

by means of force and intimidation. The Assistant City Prosecutor certified that it was filed with the prior authority of the City Prosecutor.[4]

The accusatory portion of the Complaint reads:

> That on or about the 29th day of October 1995, in the City of Mandaluyong, Philippines, a place within the Jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned against her will and consent.
>
> Contrary to law.[5]

Upon arraignment, appellant, duly assisted by his counsel, pleaded not guilty to the offense charged. After trial the RTC rendered its decision dated August 29, 1997,[6] the dispositive portion of which reads as follows:

> WHEREFORE, foregoing considered [sic], the court finds accused NORBERTO MATEO *Y* DIZON GUILTY beyond reasonable doubt of the crime of rape and hereby sentences said accused to a penalty of *reclusion perpertua* and to indemnify the offended party the amount of ₱50,000.00 and to pay the costs.[7]

Appellant initially appealed to this Court. Conformably with *People v. Mateo*,[8] the Court transferred the case to the CA.

On September 30, 2005, the CA issued its assailed decision, the dispositive portion of which reads:

Republic Act No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 5.

[5] *Id.* at 4-5.

[6] Per Judge Mariano M. Umali; Criminal Case No. 109203-H; *id.* at 5-29.

[7] *Id.* at 28-29.

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

WHEREFORE, the assailed decision of the Regional Trial Court of Pasig City, Branch 160 finding accused Norberto Mateo *y* Dizon GUILTY beyond reasonable doubt of the crime of rape and imposing upon him the penalty of *reclusion perpetua* is hereby AFFIRMED with the MODIFICATION that accused is further ordered to indemnify the complainant in the amount of ₱50,000.00 as moral damages.[9]

The records of the case were elevated to this Court in view of the notice of appeal filed by appellant.

By Resolution[10] dated February 1, 2006, this Court required the parties to file their supplemental briefs if they so desired within thirty days from notice. Counsel for appellant filed a Manifestation in lieu of a supplemental brief adopting the appellant's brief filed on January 26, 1999 as his supplemental brief. The Office of the Solicitor General (OSG) filed its supplemental brief.

Appellant raises the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE COMPLAINANT IS A MENTAL RETARDATE.[11]

The appeal lacks merit.

The facts of the case:

The evidence for the prosecution established that AAA only finished grade one and does not know how to read and write except her name. On October 29, 1995, at around 1:00 p.m., AAA, then 16 years old, was at the house of her *Ate* Nimfa,

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

[10] *Rollo*, p. 14.

[11] *Id.* at 41.

located at Welfareville Compound, Mandaluyong City, when appellant arrived at the said house and drank gin.[12] After a while, appellant approached AAA and pulled her[13] towards a grassy place which was three to four meters away.[14] When they reached the grassy place, appellant removed AAA's shirt, shorts and panties and his own short pants.[15] Appellant laid AAA on the ground, went on top of her and while holding her breast inserted his penis into her vagina.[16] While doing this, appellant told AAA not to report or he would kill her.[17]

Zenaida Torno, a *bantay bayan* volunteer, who was then cooking at the outpost of Mandaluyong City, saw children at the monument near the Jose Fabella Memorial School looking at the direction of the swimming pool and shouting indecent words.[18] Torno then went to the place and saw appellant pumping on top of AAA. Torno asked him to stop but he still continued with what he was doing to AAA.[19] Torno then asked the help of a man who was gathering grass at that time and the man boxed appellant and held him away from AAA.[20] Torno then reported the incident to the authorities and brought the appellant and AAA to the *barangay* hall.[21]

Dr. Reyes conducted his examination of AAA on October 29, 1995 and prepared his report[22] as Living Case No. MG-95-1275, thus:

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[12] TSN, March 7, 1996, pp. 3-4.

[13] *Id.* at 4.

[14] *Id.* at 5.

[15] TSN, March 7, 1996, p. 6.

[16] *Id.* at 7.

[17] *Id.* at 8.

[18] TSN, July 11, 1996, pp. 2-3.

[19] *Id.* at 4.

[20] *Id.*

[21] *Id.* at 5.

[22] Records, p. 94; Exhibit "F".

Findings

x x x x x x x x x

PHYSICAL INJURIES

Abrasions; linear, reddish, smallest is 4.0 cms and biggest is 10.0 cms. covering an area of 27.0 cms x 20.0 cms, back; 3.0 cms., thigh, middle 3rd antero-medial aspect left.

GENITAL EXAMINATIONS:

x x x Hymen, moderately tall with deep fresh hymenal laceration at 6:00 o'clock position corresponding to a face of a watch, which bleeds on slight pressure.

CONCLUSIONS:

1. The above-described extragenital physical injuries were noted on the body of the subject at the time of examination.
2. Deep, fresh hymenal laceration, present.[23]

Dr. Reyes testified that AAA could have been laid on a rough surface as shown by the multiple linear abrasions found at her back and the anterum medial aspect of her thigh;[24] that she had been sexually penetrated possibly with the use of force and violence;[25] that he noticed that AAA was suffering from some form of mental retardation as she was not responding to his question like a 17-year old[26] girl should, compelling him to refer her to a neuro-psychiatrist for examination;[27] that based on the result forwarded to him, AAA had a mental age of 5 years and 8 months with an IQ of 38.[28]

Appellant denied raping AAA. He testified that on October 29, 1995 at about 10:00 o'clock a.m., he and AAA met at the

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[23] Records, p. 94.

[24] TSN, October 15, 1996, p. 4.

[25] *Id.* at 5.

[26] At the time the examination was conducted on AAA, she was only 16 years old.

[27] TSN, October 15, 1996, p. 5.

[28] *Id*.

house of his Aunt Nimfa.[29] They talked to each other regarding their relationship as AAA was his girlfriend. He told AAA that they better move to another place because they might be reprimanded by her mother.[30] They proceeded to Fabella School and talked in front of the school. While they were conversing, a woman shouted at them.[31] They approached the said woman and the latter asked what they were doing, to which appellant replied that they were merely talking with each other.[32] Not contented with his answer, they forcibly brought them to the *barangay* hall where the two were detained for more than an hour until AAA's parents arrived.[33] AAA was immediately brought out of the detention cell while appellant was investigated further.[34]

Nelia Marquez, co-occupant of the house where appellant temporarily resided, corroborated appellant's testimony regarding his relationship with AAA. She testified that she frequently saw the two talking to each other. She even asked AAA whether they had a relationship to which AAA simply nodded her head.[35]

In convicting appellant, the RTC said that the issue hinged not only on the complainant's version but more importantly on the conduct of the complainant observed by the court in the course of the trial. The RTC observed that AAA appeared to be mentally deficient and behaved like a child when she answered even direct questions; that she did not remember her birthday and the exact place where appellant had sexually abused her except to say on a "grassy land or *damuhan*" and near a high monument when asked in what municipality; thus, it was not difficult to understand that when appellant pulled her to a grassy place, she did not shout or ask for help. The RTC found AAA's

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[29] TSN, January 9, 1997, p. 3.

[30] *Id.* at 4.

[31] *Id.* at 5.

[32] *Id.* at 6.

[33] *Id.*

[34] *Id.* at 7.

[35] TSN, February 20, 1997, pp. 4-5.

testimony to be credible and sincere. Coupled with the findings of the *medico legal* expert and the fact that appellant had sexual intercourse with AAA as testified to by Torno who actually saw the incident, the RTC found appellant guilty of the crime of rape beyond reasonable doubt.

On appeal, appellant contends that the testimony of alleged eyewitness Torno appeared to be too weak to overcome the constitutional presumption of innocence in favor of appellant; that Torno's testimony that while AAA was being raped, there were more than 15 children watching her and appellant; that said children were uttering indecent words as if suggesting what sexual position the two should perform, giving the impression that what transpired between the two was a voluntary take sexual intercourse between two consenting adults; that Torno was scandalized by what she saw at that time, as she even testified that she brought the two to the *barangay* hall, as they were doing a wrong thing. Appellant pointed out that in AAA's testimony she said that there were people around when appellant went on top of her and yet she did not ask help from them; that to inject an element of fear, AAA testified that appellant would kill her, however, no deadly weapon was used by appellant in threatening her; that the records are bereft of any sign of struggle; and that the linear abrasions found on AAA's body could have been caused by sharp grass and the rough surface where the two lay, which was even admitted by the *medico legal* officer.

Appellant pointed out that the RTC erred in admitting as evidence the psychological examination conducted on AAA, as it was never testified to by the doctors who examined her, but was only identified by the *medico legal* officer who had no expertise on the subject matter.

The CA found unpersuasive appellant's assault on Torno's credibility because judicial notice was taken of the fact that the rape scene is not always secluded or isolated, as it can be committed in places where people congregrate; that complainant's failure to struggle or to offer adequate resistance against appellant is of no moment, as physical resistance need not be established in rape when intimidation was exercised upon the victim and

she submitted herself to the rapist's lust out of fear for her life and personal safety. The CA found satisfactory the explanation advanced by AAA that she was threatened with death which rendered her unable to scream or ask for help; that such threat or intimidation produced a reasonable fear in her mind that it would be carried out if she resisted the desires of appellant; that there was force when appellant pulled her to a grassy place, and there was intimidation when he threatened to kill her if she would report the incident; thus, the fact that no deadly weapon was used by appellant in making the threat had no bearing. The CA further found that the medical findings of Dr. Reyes also corroborated AAA's claim that she had been sexually molested by appellant.

While the CA ruled that the result of AAA's mental examination should not be admitted by the trial court, since the neuro-psychiatrist who examined AAA was never presented in court, notwithstanding that no timely objection was raised during trial, the CA declared that AAA suffered some mental deficiency which was neither disputed nor challenged by appellant as he even admitted that AAA's mental capacity was very low; that the RTC judge had also observed AAA's mental retardation, as he mentioned it in his decision which sufficed even in the absence of an expert opinion on the matter.

The CA did not give credence to appellant's claim that he and AAA were sweethearts and the sexual act was consensual; that except for appellant's own declaration, he did not present anything to prove their alleged love relationship and was unable to prove that carnal knowledge between him and AAA was consensual. Thus, the CA affirmed appellant's conviction and also awarded to the victim the amount of ₱50,000.00 as moral damages.

It has often been said, to the point of being repetitive, that when the credibility of the witness is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter

the results of the case.[36] The RTC has the unique advantage of monitoring and observing at close range the demeanor, deportment and conduct of the witnesses as they regale the trial court with their testimonies.[37] In this case, the RTC found AAA's testimony credible and sincere and gave it full probative weight. We find no cogent reason to overturn the CA's affirmance of such finding.

Article 335[38] of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659[39] was the law applicable at the time of the rape. It provides:

> Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under 12 years of age or is demented.
>
> x x x x x x x x x

The gravamen of rape is carnal knowledge of a woman against her will or without her consent.[40]

In this case, the prosecution was able to establish the fact that appellant had carnal knowledge of AAA against her will or without her consent, thus:

> Q. When he was on top of you, what did he do if any with your private parts?

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[36] *People v. Madronio*, G.R. Nos. 137587 & 138329, July 29, 2003, 407 SCRA 337, 347, citing *People v. Layoso*, 443 Phil. 827 (2003).

[37] *Id.* citing *People v. Ramos*, 442 Phil. 710 (2002).

[38] Now Article 266-A and 266-B of the Revised Penal Code as amended by Republic Act No. 8353, "The Anti-Rape Law of 1997," which took effect on October 22, 1997.

[39] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws and for Other Purposes. Took effect on 31 December 1993.

[40] *People v. Esperida*, 443 Phil. 818 (2003).

A. He inserted his private part to my vagina.

Q. How long was his private part inserted to your private part?
A. 8.30.

Q. How many minutes that his private party was inserted to your private part?
A. *Alas dose po.*

Q. Was it for a short time or for a long time?
A. *Matagal po.*

Q. When his private part was inside your private part, what was the movement of the body of Norberto.

A. —

Atty. Pio
Leading your honor.

COURT:
What was he doing after inserting his private part, what did he do?
A. He held my breast.

Prosecutor Borlas:
Q. How about the buttocks, what were the movements being made by him?
A. He was grinding his buttocks.

Q. And while he was on top of you what if any did he tell you?
A. Not to report him.

Q. What was your reaction to what he said?
A. *Papatayin daw ako.*

Q. What did you think he will do if you will report the incident?
A. He will kill me.

Q. So, after he got up on top of you what else transpired?
A. No more.[41]

Torno corroborated AAA's testimony on the carnal knowledge as she actually saw appellant pumping on top of AAA. Also, the medico-legal officer testified and presented his undisputed findings of the presence of a deep, fresh hymenal laceration

[41] TSN, March 7, 1996, pp. 7-8.

which further established that AAA had been sexually penetrated. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.[42]

Appellant's attack on Torno's credibility by claiming that Torno's testimony showed that she was only scandalized by what she saw AAA and appellant were doing in the open and which in her opinion was wrong would not detract from the fact that Torno actually saw appellant having carnal knowledge of AAA.

The prosecution was able to establish that force and intimidation were employed by appellant to perpetuate the offense charged.

As the CA correctly found, appellant pulled AAA from the house of her *Ate* Nimfa and brought her to a grassy place. Notably, AAA was only 16 years old then while appellant was already 21, a construction worker. Moreover, while appellant was on top of AAA, he told the latter not to report his act as she would be killed. AAA's perception that bodily harm might be inflicted on her by appellant while she was being raped made her vulnerable to appellant's intimidation, which was sufficient for AAA to submit to appellant's desires.

Appellant's claim that AAA testified that there were people around when the rape incident took place and yet AAA did not ask help from them is not persuasive. The people seen by AAA during the rape incident were the children who were positioned at the monument which was a few meters away from the grassy land where AAA and appellant were at that time,[43] and who were even shouting indecent words. She was not able to shout because she was scared.[44] AAA's failure to shout for help does not vitiate the credibility of her account that she was raped. To reiterate, AAA was only 16 years old at the time of the rape and inexperienced in the ways of the world.

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[42] *People v. Segui*, G.R. Nos. 131532-34, November 28, 2000, 346 SCRA 178, 186.

[43] TSN, July 11, 1996, p. 3.

[44] TSN, March 20, 1996, p. 3.

Appellant's claim that the records do not show any sign or presence of struggle is irrelevant. Physical resistance is not an essential element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.[45] It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused.[46] Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone.[47] The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[48] Also, the inequality of their physical strength made any resistance on AAA's part futile.[49]

Moreover, the fact that there was no weapon used by the accused does not rule out force in the rape committed.[50] It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size and strength of the parties.[51] It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or

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[45] *People v. Alberio*, G.R. No. 152584, July 6, 2004, 433 SCRA 469, 475 citing *People v. Rebose*, 367 Phil. 768 (1999).

[46] *Id.* citing *People v. Corea*, 336 Phil. 72 (1997).

[47] *Id.* citing *People v. Cabel*, G.R. No. 121508, December 14, 1995, 282 SCRA 410.

[48] *Id.* citing *People v. Malunes*, 317 Phil. 378 (1995).

[49] *People v. Pulanco*, G.R. No. 141186, November 27, 2003, 416 SCRA 532, 540 citing *People v. Ferrer*, G.R. Nos. 116516-20, September 7, 1998, 295 SCRA 190.

[50] *People v. Marabillas*, G.R. No. 127494, February 18, 1999, 303 SCRA 352, 359 citing *People v. Domingo*, G.R. No. 97921, September 8, 1993, 226 SCRA 156.

[51] *People v. Moreno*, G.R. No. 126921, August 28, 1998, 294 SCRA 728, 739.

intimidation be sufficient to consummate the purpose which the accused had in mind.[52]

Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule.[53] Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[54] AAA was threatened that she would be killed, which created a fear in her mind which caused her to submit to appellant's bestial lust.

AAA, a minor, cannot be expected to react under such circumstances like a mature woman. Because of her immaturity, she can be easily intimidated, subdued, and terrified by a strong man like appellant.[55] Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.[56]

During the trial, the prosecution presented evidence tending to show that AAA was a mental retardate. It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[57] However, this fact was not alleged

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[52] *Id.* citing *People v. Antonio*, G.R. No. 107950, June 17, 1994, 233 SCRA 283.

[53] *People v. Rapisora*, G.R. No. 138086, January 25, 2001, 350 SCRA 299, 307.

[54] *Id.* citing *People v. Oarga*, G.R. Nos. 109396-97, July 17, 1996, 259 SCRA 90.

[55] *People v. Padilla*, G.R. No. 126124, January 20, 1999, 301 SCRA 265, 274 citing *People v. Gumahob*, G.R. No. 116740, November 28, 1996, 265 SCRA 84.

[56] *People v. Ortega*, G.R. No. 137824, September 17, 2002, 389 SCRA 167, 180.

[57] *People v. Jackson*, G.R. No. 131842, June 10, 2003, 403 SCRA 500, 516 citing *People v. Lopez*, G.R. No. 135671, November 29, 2000, 346 SCRA 469, 474; *People v. Padilla*, *supra* note 55.

in the complaint filed in this case and therefore cannot be the basis for conviction.[58]

In any event, the prosecution presented adequate evidence which showed that the appellant used force and intimidation in committing the crime of rape, and which the RTC relied upon in convicting appellant. The absence of evidence of any improper motive on the part of AAA to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.[59]

Article 335 of the Revised Penal Code as amended by Section 11 of R.A. No. 7659 provides the penalty of *reclusion perpetua* for the carnal knowledge of a woman procured through force or intimidation and without any other attendant circumstance. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*.

With respect to the civil liability of appellant, we find that the CA correctly affirmed the RTC's award to the offended party in the amount of ₱50,000.00 as civil indemnity, as well as the CA's additional award of ₱50,000.00 as moral damages even without need of further proof, considering that AAA sustained mental, physical and psychological suffering.[60]

WHEREFORE, the Decision dated September 30, 2005 of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

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[58] *People v. Capinpin*, G.R. No. 118608, October 30, 2000, 344 SCRA 420, 429.

[59] *People v. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84; *People v. Sotto*, G.R. No. 106099, July 8, 1997, 275 SCRA 191, 201.

[60] *People v. Espino, Jr.,* G.R. No. 176742, June 17, 2008; *People v. Mallari*, G.R. No. 179051, March 28, 2008.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated September 22, 2008.

SECOND DIVISION

[G.R. No. 173106. September 30, 2008]

COSME NACARIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; HAVING INTERPOSED SELF-DEFENSE, PETITIONER HAD THE ONUS OF PROVING ITS ELEMENTS. — Having interposed self-defense, petitioner had the *onus* of proving its elements, *viz*: (1) unlawful aggression on the part of the victim; (2) means of reasonable necessity to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.

2. ID.; ID.; ID.; UNLAWFUL AGGRESSION; AGGRESSION CEASED WHEN THE VICTIM WAS DIVESTED OF HIS *BALISONG*. — Assuming *arguendo* that unlawful aggression initially came from the victim, the aggression ceased when the victim was divested of his *balisong*. At that instant, there was no longer any imminent risk to petitioner's life or personal safety. *Apropos* is this Court's pronouncement in *People v. Ebmerga*:" It is clear even from [the accused] Romeo Ebmerga's testimony alone that when he threw a stone at Rafaelito Nolasco, causing the latter to drop the knife he was holding, there was no longer any imminent risk or danger to his life. Thus, when Romeo Ebmerga went on to lunge for the victim's knife on the ground and thrust it for an untold number of times into the victim's body, he was not acting to repel an attack or to protect himself from the aggression of the victim. It strains credulity to accept the version of the defense that despite dropping the knife, the victim still faced Romeo Ebmerga in a menacing manner and "with the intention of killing him." Again assuming *arguendo* that the victim thereafter turned his back and picked up stones, there was, as the trial court found, before that "an interval of time" which afforded petitioner time to "run away" as, after all, he had warded off the four prior attempts to stab him.

3. ID.; ID.; ID.; CONDITION *SINE QUA NON* FOR SELF-DEFENSE TO BE A JUSTIFYING CIRCUMSTANCE. — It is a statutory and doctrinal requirement that the presence of unlawful aggression is a condition *sine qua non* for self-defense to be a justifying circumstance. Such element not being present on the victim's part, discussion of the rest of the elements of self-defense is rendered unnecessary.

4. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; PRESENT IN CASE AT BAR. — On the modification by the appellate court of the penalty imposed by the trial court, this Court finds the same well-taken, petitioner's voluntary surrender being a mitigating circumstance.

5. ID.; DAMAGES; ACTUAL DAMAGES; MUST BE BASED ON ACTUAL EXPENSES. — As for the reduction by the appellate court of the award of actual damages, it is well-taken too as the documentary evidence for the purpose (Exhibit "C"-"C-13" representing expenses for medicine) totals only the amount of ₱2,261.55.

6. ID.; ID.; MORAL DAMAGES; AWARDED IN CASE AT BAR. — And so is the appellate court's award of moral damages in the amount of ₱30,000, it being in consonance with law and prevailing jurisprudence.

APPEARANCES OF COUNSEL

Caayao Caayao Law and Notary Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner, Cosme Nacario, was charged of Frustrated Murder in an August 27, 1997 Information filed before the Regional Trial Court (RTC) of Iriga City, the accusatory portion of which reads:

That on or about the 29th day of March, 1997 at about 3:05 o'clock in the afternoon at Sto. Domingo, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without

authority of law and with evident premeditation, did, then and there willfully, unlawfully and feloniously attack and stab with the said [*sic*] weapon, one Medardo M. de Villa, hitting the latter at the left side portion of his stomach, accused thereby have [sic] performed all the acts of execution which would have produced the crime of murder, but which nevertheless was not produced by reason of causes independent of the will of the accused, and that is by the timely medical assistance rendered to the aforesaid victim which prevented his death, to his damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.

In the afternoon of March 29, 1997, Medardo de Villa (the victim), while on board a bicycle along a road at Iriga City, met petitioner who was also on board a bicycle coming from the opposite direction.[1] After both alighted from their respective bicycles, petitioner stabbed the victim with a *balisong* (fan knife)[2] at the upper left portion of the abdomen.[3]

The clinical data sheet[4] of the victim, who was operated on at the Bicol Medical Center, showed the following:

x x x x x x x x x

FINAL DIAGNOSIS:

Stab wound, 3 cm., subcostal Area, Anterior Axillary Line, **left penetrating the diaphragm, incising the spleen type I**

x x x (Emphasis and underscoring supplied)

Not long after the incident, petitioner surrendered to the police.

Petitioner admitted having stabbed the victim. He interposed self-defense, however, and gave the following version:

As he and the victim met on the road, the victim whom he had earlier seen "drinking with others" in front of his (the victim's)

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[1] TSN, December 22,1998, p. 4.

[2] *Ibid*.

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

[4] Records, Vol. I, p. 195; Exhibit "A".

house blocked his path and, without warning, swung a fan knife toward him but missed him. The victim thereafter again thrice attempted to hit him with the knife but also missed him as he always "sw[ung] his body backward," but on the last attempt, he (petitioner) was able to wrest the knife from the victim. Sensing danger to his person when the victim turned his back to pick up stones and "was poised to strike," he stabbed him once with the knife.[5]

> Q: You also testified that Midardo [*sic*] de Villa attempted . . . to stab [you] by a knife, but it was only on the 4th time that you were able to wrest the [B]atangas knife from him. Now, will you please stand up and demonstrate to the Honorable Court how were you able to evade these three times Midardo de Villa's attempt[ed] to stab you with [a] [B]atangas knife?
>
> A: The first time he stabbed [*sic*] me (witness swinging his right arm from right to left with him evading the blow while swinging his body backward)[.] I did not react instantly because I could hear the people in the waiting shed pacifying him not to continue and the second time was in like manner [*sic*] swinging his right hand towards me from left to right with me evading with blow [*sic*] by the backward [*sic*] and **the third time that he attempted to stab me I decided to wrest the [B]atangas knife**. **So from him** [*sic*] **I could sense he really intends to harm me. The 4th time he attempted I really sense** [*sic*] **that he really determine** [*sic*] **to stab me. So I pary** [*sic*] **blow with my left hand and the [B]atanags [*sic*] knife with my right hand. After which he picked up stones and it [*sic*] was in the act of throwing the stones to me that I have** [*sic*] **chance to stab him. After I stabbed him, he fell down and so I left**.[6] (Emphasis and underscoring supplied)

Petitioner added that prior to the incident, there had been several attempts of the victim to stab him, and even the victim's brothers harassed and threatened him.[7]

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[5] TSN, July 12, 1999, p. 10.

[6] TSN, July 12, 1999, pp. 9-10.

[7] TSN, June 23, 1999, pp. 8-10; TSN, July 12, 1999, p. 3.

By Decision of July 5, 2002,[8] the Regional Trial Court convicted petitioner of Frustrated Homicide, disposing as follows:

> WHEREFORE, finding accused, COSME NACARIO guilty beyond reasonable doubt for the crime of frustrated homicide, he is sentenced to imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days to thirteen (13) years; nine (9) months and ten (10) days, the medium of *reclusion temporal*, minimum period which is minimum of, to [sic] fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days, the medium of *reclusion temporal* in its medium period which is the maximum period of the indeterminate sentence; to pay an indemnity of ₱25,000.00; actual damages including attorney [sic] and doctor's fees of ₱35,000.00 and to pay the cost.
>
> SO ORDERED.

In ruling out self-defense, the trial court held:

> Accused could not claim self-defense because, after having wrestled away the knife from complainant, if at all complainant was originally in possession of the knife and tried to stab him [*sic*], **there was already an interval of time when complainant turned his back from him and picked up a stone.** Assuming without admitting that complainant picked up a stone to throw at him, he could always run away from the fight. After all he was patient enough to ward off complainant's attempts to stab him. This version of the accused is not credible. The court believes that it was accused who was in possession of the knife all the time when they met and he stabbed him.[9] (Emphasis and underscoring supplied)

By Decision of May 18, 2006,[10] the Court of Appeals affirmed the findings of the trial court but modified the penalty after considering the mitigating circumstance of voluntary surrender of petitioner. Thus the appellate court disposed:

> WHEREFORE, premises considered, the assailed July 5, 2002 Decision of the RTC of Iriga City, Branch 35, in Criminal Case No.

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[8] *Rollo,* pp. 33-41.

[9] *Id.* at p. 39.

[10] *Rollo*, pp. 19-29. Penned by Justice Vicente Q. Roxas with Justices Godardo A. Jacinto and Juan Q. Enriquez Jr. concurring.

IR-4445, which convicted accused-appellant Cosme Nacario of the crime of Frustrated Homicide, is hereby AFFIRMED with MODIFICATION that the penalty should be from two (2) years and four months of *prision correccional* in its minimum period, as minimum, to six (6) years and one (1) day of *prision mayor* in its minimum period, as maximum. Moreover, accused-appellant Cosme Nacario is ORDERED to pay the victim, Medardo M. de Villa, in addition to indemnity of ₱25,000.00, the amounts of ₱2,261.55 as actual damages and ₱30,000.00 as moral damages.

SO ORDERED. (Underscoring supplied)

Hence, the present petition for review.

Having interposed self-defense, petitioner had the *onus* of proving its elements, *viz*: (1) unlawful aggression on the part of the victim; (2) employment of reasonable necessity to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[11]

Petitioner maintained that the victim provoked the incident by waylaying him, and that after he wrested the knife from the victim, the latter instantaneously picked up stones, thus making him (petitioner) believe that "an attack was still forthcoming and [he] was still threatened by some evil or injury,"[12] hence, his stabbing of the victim.

Assuming *arguendo* that unlawful aggression initially came from the victim, the aggression ceased when the victim was divested of his *balisong.* At that instant, there was no longer any imminent risk to petitioner's life or personal safety.

Apropos is this Court's pronouncement in *People v. Ebmerga*:[13]

It is clear even from [the accused] Romeo Ebmerga's testimony alone that when he threw a stone at Rafaelito Nolasco, causing the latter to drop the knife he was holding, there was no longer any imminent risk or danger to his life. Thus, when Romeo Ebmerga

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[11] Article 11, REVISED PENAL CODE.

[12] *Rollo*, pp. 12-14.

[13] G.R. No. 116616, November 26, 1999, 319 SCRA 304, 320.

went on to lunge for the victim's knife on the ground and thrust it for an untold number of times into the victim's body, he was not acting to repel an attack or to protect himself from the aggression of the victim. It strains credulity to accept the version of the defense that despite dropping the knife, the victim still faced Romeo Ebmerga in a menacing manner and "with the intention of killing him." (Underscoring supplied)

Again assuming *arguendo* that the victim thereafter turned his back and picked up stones, there was, as the trial court found, before that "an interval of time" which afforded petitioner time to "run away" as, after all, he had warded off the four prior attempts to stab him.

As for petitioner's varying claim that the victim was "in the act of throwing the stones [at him]" on account of which he was afforded a chance to stab him, the Court finds the same incredible, given the oddity of the victim possibly throwing stones, whose sizes were not even described, from a distance near enough for petitioner to reach and stab the victim.

As for petitioner's still another varying claim, clearly an afterthought, that the victim was able to strike him with a stone before he (petitioner) stabbed the victim,[14] that no claim that petitioner was injured dents credibility thereof.

It is a statutory and doctrinal requirement that the presence of unlawful aggression is a condition *sine qua non* for self-defense to be a justifying circumstance. Such element not being present on the victim's part, discussion of the rest of the elements of self-defense is rendered unnecessary.

As did the lower courts, the Court thus brushes aside petitioner's plea of self-defense. Petitioner's conviction of Frustrated Murder is thus upheld.

On the modification by the appellate court of the penalty imposed by the trial court, this Court finds the same well-taken, petitioner's voluntary surrender being a mitigating circumstance.

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[14] TSN, July 12, 1999, p. 4.

As for the reduction by the appellate court of the award of actual damages, it is well-taken too as the documentary evidence for the purpose[15] (Exhibit "C"-"C-13" representing expenses for medicine) totals only the amount of ₱2,261.55. And so is the appellate court's award of moral damages in the amount of ₱30,000, it being in consonance with law[16] and prevailing jurisprudence.[17]

As for the award of ₱25,000 as indemnity, there being no legal basis, it must be deleted.

WHEREFORE, the May 18, 2006 Decision of the Court of Appeals finding petitioner, Cosme Nacario, guilty beyond reasonable doubt of Frustrated Homicide is *AFFIRMED with MODIFICATION*. The award of ₱25,000 as indemnity is *DELETED*; in its stead, the award of ₱30,000 as temperate damages is *ORDERED*. In all other respects, the appellate court's Decision is *AFFIRMED*.

Costs *de oficio*.

SO ORDERED.

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

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[15] Records, Vol. I, pp. 160-162; Exhibits "C" to "C-12".

[16] Article 2219 of the NEW CIVIL CODE.

[17] *Santos v. Court of Appeals*, 461 Phil. 36, 55 (2003).

THIRD DIVISION

[G.R. No. 178505. September 30, 2008]

CHERRY J. PRICE, STEPHANIE G. DOMINGO and LOLITA ARBILERA, *petitioners, vs.* **INNODATA PHILS. INC.,/INNODATA CORPORATION, LEO RABANG and JANE NAVARETTE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; DEFINED. — Regular employment has been defined by Article 280 of the Labor Code, as amended, which 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 engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the duration of the season. An employment shall be deemed to be casual if it 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. Based on the afore-quoted provision, the following employees are accorded regular status: (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, regardless of the length of their employment; and (2) those who were initially hired as casual employees, but have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.

2. ID.; ID.; ID.; APPLICABLE TEST TO DETERMINE WHETHER AN EMPLOYMENT SHOULD BE CONSIDERED REGULAR

OR NON-REGULAR; CASE AT BAR. — Under Article 280 of the Labor Code, the applicable test to determine whether an employment should be considered regular or non-regular is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. In the case at bar, petitioners were employed by INNODATA on 17 February 1999 as formatters. The primary business of INNODATA is data encoding, and the formatting of the data entered into the computers is an essential part of the process of data encoding. Formatting organizes the data encoded, making it easier to understand for the clients and/or the intended end users thereof. Undeniably, the work performed by petitioners was necessary or desirable in the business or trade of INNODATA.

3. ID.; ID.; EMPLOYMENT; TERM EMPLOYMENT; DECISIVE DETERMINANT. — The decisive determinant in term employment is the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which must necessarily come, although it may not be known when. Seasonal employment and employment for a particular project are instances of employment in which a period, where not expressly set down, is necessarily implied.

4. ID.; ID.; ID.; ID.; VALID ONLY UNDER CERTAIN CIRCUMSTANCES. — While this Court has recognized the validity of fixed-term employment contracts, it has consistently held that this is the exception rather than the general rule. More importantly, a fixed-term employment is valid only under certain circumstances. In *Brent*, the very same case invoked by respondents, the Court identified several circumstances wherein a **fixed-term is an essential and natural appurtenance**, to wit: Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are

by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. Similarly, despite the provisions of Article 280, Policy Instructions No. 8 of the Minister of Labor implicitly recognize that certain company officials may be elected for what would amount to fixed periods, at the expiration of which they would have to stand down, in providing that these officials, "x x x may lose their jobs as president, executive vice-president or vice president, *etc*. because the stockholders or the board of directors for one reason or another did not reelect them."

5. ID.; ID.; ID.; CONTRACT OF EMPLOYMENT; ANY AMBIGUITY THEREIN SHOULD BE CONSTRUED STRICTLY AGAINST THE PARTY WHO PREPARED IT. — Even assuming that petitioners' length of employment is material, given respondents' muddled assertions, this Court adheres to its pronouncement in *Villanueva v. National Labor Relations Commission*, to the effect that where a contract of employment, being a contract of adhesion, is ambiguous, any ambiguity therein should be construed strictly against the party who prepared it. The Court is, thus, compelled to conclude that petitioners' contracts of employment became effective on 16 February 1999, and that they were already working continuously for INNODATA for a year.

6. ID.; ID.; PROJECT EMPLOYEES; DEFINED. — In *Philex Mining Corp. v. National Labor Relations Commission*, the Court defined "project employees" as those workers hired (1) for a specific project or undertaking, and wherein (2) the completion or termination of such project has been determined at the time of the engagement of the employee.

7. ID.; ID.; TERMINATION OF EMPLOYMENT; BASIC TENET THAT NO EMPLOYEE MAY BE TERMINATED EXCEPT FOR A JUST OR AUTHORIZED CAUSE. — Pursuant to the afore-quoted provisions, petitioners have no right at all to expect security of tenure, even for the supposedly one-year period of employment provided in their contracts, because they can still be pre-terminated (1) upon the completion of an unspecified project; or (2) with or without cause, for as long as they are given a three-day notice. Such contract provisions are repugnant to the basic tenet in labor law that no employee may be terminated except for just or authorized cause. Under

Section 3, Article XVI of the Constitution, it is the policy of the State to assure the workers of security of tenure and free them from the bondage of uncertainty of tenure woven by some employers into their contracts of employment. This was exactly the purpose of the legislators in drafting Article 280 of the Labor Code — to prevent the circumvention by unscrupulous employers of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment.

8. ID.; ID.; ID.; SECURITY OF TENURE; CONSTRUED. — In all, respondents' insistence that it can legally dismiss petitioners on the ground that their term of employment has expired is untenable. To reiterate, petitioners, being regular employees of INNODATA, are entitled to security of tenure. In the words of Article 279 of the Labor Code: ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

9. ID.; ID.; ID.; ILLEGAL DISMISSAL; BENEFITS AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO; CASE AT BAR. — By virtue of the foregoing, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, with full back wages computed from the time of dismissal up to the time of actual reinstatement. Considering that reinstatement is no longer possible on the ground that INNODATA had ceased its operations in June 2002 due to business losses, the proper award is separation pay equivalent to one month pay for every year of service, to be computed from the commencement of their employment up to the closure of INNODATA. The amount of back wages awarded to petitioners must be computed from the time petitioners were illegally dismissed until the time INNODATA ceased its operations in June 2002. Petitioners are further entitled to attorney's fees equivalent to 10% of

the total monetary award herein, for having been forced to litigate and incur expenses to protect their rights and interests herein.

10. COMMERCIAL LAW; CORPORATIONS; AS A RULE, CORPORATE OFFICERS ARE NOT PERSONALLY LIABLE FOR THEIR OFFICIAL ACTS; CASE AT BAR. — Finally, unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. Although as an exception, corporate directors and officers are solidarily held liable with the corporation, where terminations of employment are done with malice or in bad faith, in the absence of evidence that they acted with malice or bad faith herein, the Court exempts the individual respondents, Leo Rabang and Jane Navarette, from any personal liability for the illegal dismissal of petitioners.

APPEARANCES OF COUNSEL

Cezar F. Maravilla, Jr. for petitioners.
Rayala Alonso & Partners for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated 25 September 2006 and Resolution[2] dated 15 June 2007 of the Court of Appeals in CA-G.R. SP No. 72795, which affirmed the Decision dated 14 December 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-03-01274-2000 finding that petitioners were not illegally dismissed by respondents.

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Martin S. Villarama Jr. and Lucas P. Bersamin, concurring. *Rollo*, pp. 47-61.

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

The factual antecedents of the case are as follows:

Respondent Innodata Philippines, Inc./Innodata Corporation (INNODATA) was a domestic corporation engaged in the data encoding and data conversion business. It employed encoders, indexers, formatters, programmers, quality/quantity staff, and others, to maintain its business and accomplish the job orders of its clients. Respondent Leo Rabang was its Human Resources and Development (HRAD) Manager, while respondent Jane Navarette was its Project Manager. INNODATA had since ceased operations due to business losses in June 2002.

Petitioners Cherry J. Price, Stephanie G. Domingo, and Lolita Arbilera were employed as formatters by INNODATA. The parties executed an employment contract denominated as a "Contract of Employment for a Fixed Period," stipulating that the contract shall be for a period of one year,[3] to wit:

CONTRACT OF EMPLOYMENT FOR A FIXED PERIOD

x x x x x x x x x

WITNESSETH: That

WHEREAS, the EMPLOYEE has applied for the position of FORMATTER and in the course thereof and represented himself/herself to be fully qualified and skilled for the said position;

WHEREAS, the EMPLOYER, by reason of the aforesaid representations, is desirous of engaging that the (sic) services of the EMPLOYEE for a fixed period;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have mutually agreed as follows:

TERM/DURATION

The EMPLOYER hereby employs, engages and hires the EMPLOYEE and the EMPLOYEE hereby accepts such appointment as FORMATTER effective FEB. 16, 1999 to FEB. 16, 2000 a period of ONE YEAR.

x x x x x x x x x

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

TERMINATION

6.1 In the event that EMPLOYER shall discontinue operating its business, this CONTRACT shall also *ipso facto* terminate on the last day of the month on which the EMPLOYER ceases operations with the same force and effect as is such last day of the month were originally set as the termination date of this Contract. Further should the Company have no more need for the EMPLOYEE's services on account of completion of the project, lack of work (sic) business losses, introduction of new production processes and techniques, which will negate the need for personnel, and/or overstaffing, this contract maybe pre-terminated by the EMPLOYER upon giving of three (3) days notice to the employee.

6.2 In the event period stipulated in item 1.2 occurs first *vis-à-vis* the completion of the project, this contract shall automatically terminate.

6.3 COMPANY's Policy on monthly productivity shall also apply to the EMPLOYEE.

6.4 The EMPLOYEE or the EMPLOYER may pre-terminate this CONTRACT, with or without cause, by giving at least Fifteen – (15) notice to that effect. Provided, that such pre-termination shall be effective only upon issuance of the appropriate clearance in favor of the said EMPLOYEE.

6.5 Either of the parties may terminate this Contract by reason of the breach or violation of the terms and conditions hereof by giving at least Fifteen (15) days written notice. Termination with cause under this paragraph shall be effective without need of judicial action or approval.[4]

During their employment as formatters, petitioners were assigned to handle jobs for various clients of INNODATA, among which were CAS, Retro, Meridian, Adobe, Netlib, PSM, and Earthweb. Once they finished the job for one client, they were immediately assigned to do a new job for another client.

On 16 February 2000, the HRAD Manager of INNODATA wrote petitioners informing them of their last day of work. The letter reads:

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[4] *Id.* at 241-242.

RE: End of Contract
Date: February 16, 2000

Please be informed that your employment ceases effective at the end of the close of business hours on February 16, 2000.[5]

According to INNODATA, petitioners' employment already ceased due to the end of their contract.

On 22 May 2000, petitioners filed a Complaint[6] for illegal dismissal and damages against respondents. Petitioners claimed that they should be considered regular employees since their positions as formatters were necessary and desirable to the usual business of INNODATA as an encoding, conversion and data processing company. Petitioners also averred that the decisions in *Villanueva v. National Labor Relations Commission*[7] and *Servidad v. National Labor Relations Commission*,[8] in which the Court already purportedly ruled "that the nature of employment at Innodata Phils., Inc. is regular,"[9] constituted *stare decisis* to the present case. Petitioners finally argued that they could not be considered project employees considering that their employment was not coterminous with any project or undertaking, the termination of which was predetermined.

On the other hand, respondents explained that INNODATA was engaged in the business of data processing, typesetting, indexing, and abstracting for its foreign clients. The bulk of the work was data processing, which involved data encoding. Data encoding, or the typing of data into the computer, included pre-encoding, encoding 1 and 2, editing, proofreading, and scanning. Almost half of the employees of INNODATA did data encoding work, while the other half monitored quality control. Due to the wide range of services rendered to its clients,

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[5] *Id.* at 116 and 120.

[6] *Id.* at 92-112.

[7] 356 Phil. 638 (1998).

[8] 364 Phil. 518 (1999).

[9] *Rollo*, p. 94.

INNODATA was constrained to hire new employees for a fixed period of not more than one year. Respondents asserted that petitioners were not illegally dismissed, for their employment was terminated due to the expiration of their terms of employment. Petitioners' contracts of employment with INNODATA were for a limited period only, commencing on 6 September 1999 and ending on 16 February 2000.[10] Respondents further argued that petitioners were estopped from asserting a position contrary to the contracts which they had knowingly, voluntarily, and willfully agreed to or entered into. There being no illegal dismissal, respondents likewise maintained that petitioners were not entitled to reinstatement and backwages.

On 17 October 2000, the Labor Arbiter[11] issued its Decision[12] finding petitioners' complaint for illegal dismissal and damages meritorious. The Labor Arbiter held that as formatters, petitioners occupied jobs that were necessary, desirable, and indispensable to the data processing and encoding business of INNODATA. By the very nature of their work as formatters, petitioners should be considered regular employees of INNODATA, who were entitled to security of tenure. Thus, their termination for no just or authorized cause was illegal. In the end, the Labor Arbiter decreed:

> FOREGOING PREMISES CONSIDERED, judgment is hereby rendered declaring complainants' dismissal illegal and ordering respondent INNODATA PHILS. INC./INNODATA CORPORATION to reinstate them to their former or equivalent position without loss of seniority rights and benefits. Respondent company is further ordered to pay complainants their full backwages plus ten percent (10%) of the totality thereof as attorney's fees. The monetary awards due the complainants as of the date of this decision are as follows:

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[10] Respondents' Position Paper; *id.* at 236. Respondents subsequently explained before this Court that petitioners were initially hired on 16 February 1999 for a particular project, but the same was completed before the period of one year, and that petitioners were rehired on 6 September 1999. Petitioners' employment contracts on record showed that their effectivity date of 16 February 1999 was crossed out and replaced with 6 September 1999.

[11] Labor Arbiter Napoleon M. Menese.

[12] *Rollo*, pp. 544-551.

A.	Backwages	
1.	Cherry J. Price 2/17/2000 – 10/17/2000 at 223.50/day ₱5,811.00/mo/ x 8 mos.	₱46,488.00
2.	Stephanie Domingo (same computation)	46,488.00
3.	Lolita Arbilera (same computation)	46,488.00
Total Backwages		₱139,464.00
B.	Attorney's fees (10% of total award)	13,946.40
	Total Award	₱153,410.40

Respondent INNODATA appealed the Labor Arbiter's Decision to the NLRC. The NLRC, in its Decision dated 14 December 2001, reversed the Labor Arbiter's Decision dated 17 October 2000, and absolved INNODATA of the charge of illegal dismissal.

The NLRC found that petitioners were not regular employees, but were fixed-term employees as stipulated in their respective contracts of employment. The NLRC applied *Brent School, Inc. v. Zamora*[13] and *St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission*,[14] in which this Court upheld the validity of fixed-term contracts. The determining factor of such contracts is not the duty of the employee but the day certain agreed upon by the parties for the commencement and termination of the employment relationship. The NLRC observed that the petitioners freely and voluntarily entered into the fixed-term employment contracts with INNODATA. Hence, INNODATA was not guilty of illegal dismissal when it terminated petitioners' employment upon the expiration of their contracts on 16 February 2000.

The dispositive portion of the NLRC Decision thus reads:

> WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the instant complaint for lack of merit.[15]

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[13] G.R. No. 48494, 5 February 1990, 181 SCRA 702.

[14] 351 Phil. 1038 (1998).

[15] *Rollo*, p. 560.

The NLRC denied petitioners' Motion for Reconsideration in a Resolution dated 28 June 2002.[16]

In a Petition for *Certiorari* under Rule 65 of the Rules of Court filed before the Court of Appeals, petitioners prayed for the annulment, reversal, modification, or setting aside of the Decision dated 14 December 2001 and Resolution dated 28 June 2002 of the NLRC.

On 25 September 2006, the Court of Appeals promulgated its Decision sustaining the ruling of the NLRC that petitioners were not illegally dismissed.

The Court of Appeals ratiocinated that although this Court declared in *Villanueva* and *Servidad* that the employees of INNODATA working as data encoders and abstractors were regular, and not contractual, petitioners admitted entering into contracts of employment with INNODATA for a term of only one year and for a project called Earthweb. According to the Court of Appeals, there was no showing that petitioners entered into the fixed-term contracts unknowingly and involuntarily, or because INNODATA applied force, duress or improper pressure on them. The appellate court also observed that INNODATA and petitioners dealt with each other on more or less equal terms, with no moral dominance exercised by the former on latter. Petitioners were therefore bound by the stipulations in their contracts terminating their employment after the lapse of the fixed term.

The Court of Appeals further expounded that in fixed-term contracts, the stipulated period of employment is governing and not the nature thereof. Consequently, even though petitioners were performing functions that are necessary or desirable in the usual business or trade of the employer, petitioners did not become regular employees because their employment was for a fixed term, which began on 16 February 1999 and was predetermined to end on 16 February 2000.

The appellate court concluded that the periods in petitioners' contracts of employment were not imposed to preclude petitioners

[16] *Id.* at 563-564.

from acquiring security of tenure; and, applying the ruling of this Court in *Brent*, declared that petitioners' fixed-term employment contracts were valid. INNODATA did not commit illegal dismissal for terminating petitioners' employment upon the expiration of their contracts.

The Court of Appeals adjudged:

> WHEREFORE, the instant petition is hereby DENIED and the Resolution dated December 14, 2001 of the National Labor Relations Commission declaring petitioners were not illegally dismissed is AFFIRMED.[17]

The petitioners filed a Motion for Reconsideration of the afore-mentioned Decision of the Court of Appeals, which was denied by the same court in a Resolution dated 15 June 2007.

Petitioners are now before this Court *via* the present Petition for Review on *Certiorari*, based on the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND GRAVE ABUSE OF DISCRETION WHEN IT DID NOT APPLY THE SUPREME COURT RULING IN THE CASE OF NATIVIDAD & QUEJADA THAT THE NATURE OF EMPLOYMENT OF RESPONDENTS IS REGULAR NOT FIXED, AND AS SO RULED IN AT LEAST TWO OTHER CASES AGAINST INNODATA PHILS. INC.

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT THE STIPULATION OF CONTRACT IS GOVERNING AND NOT THE NATURE OF EMPLOYMENT AS DEFINED BY LAW.

III.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT CONSIDER THE EVIDENCE

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[17] *Id.* at 61.

ON RECORD SHOWING THAT THERE IS CLEAR CIRCUMVENTION OF THE LAW ON SECURITY OF TENURE THROUGH CONTRACT MANIPULATION.[18]

The issue of whether petitioners were illegally dismissed by respondents is ultimately dependent on the question of whether petitioners were hired by INNODATA under valid fixed-term employment contracts.

After a painstaking review of the arguments and evidences of the parties, the Court finds merit in the present Petition. There were no valid fixed-term contracts and petitioners were regular employees of the INNODATA who could not be dismissed except for just or authorized cause.

The employment status of a person is defined and prescribed by law and not by what the parties say it should be.[19] Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good.[20] Thus, provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.[21]

Regular employment has been defined by Article 280 of the Labor Code, as amended, which 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

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[18] *Id.* at 13-45.

[19] *Industrial Timber Corporation v. National Labor Relations Commission*, G.R. No. 83616, 20 January 1989, 169 SCRA 341, 348.

[20] Article 1700 of the Civil Code.

[21] *Pakistan International Airlines Corporation v. Ople*, G.R. No. 61594, 28 September 1990, 190 SCRA 90, 99.

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 engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the duration of the season.

An employment shall be deemed to be casual if it 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. (Underscoring ours)

Based on the afore-quoted provision, the following employees are accorded regular status: (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, regardless of the length of their employment; and (2) those who were initially hired as casual employees, but have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.

Undoubtedly, petitioners belong to the first type of regular employees.

Under Article 280 of the Labor Code, the applicable test to determine whether an employment should be considered regular or non-regular is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer.[22]

In the case at bar, petitioners were employed by INNODATA on 17 February 1999 as formatters. The primary business of INNODATA is data encoding, and the formatting of the data entered into the computers is an essential part of the process of data encoding. Formatting organizes the data encoded, making it easier to understand for the clients and/or the intended end users thereof. Undeniably, the work performed by petitioners was necessary or desirable in the business or trade of INNODATA.

[22] *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 260-261 (2003); *Big AA Manufacturer v. Antonio*, G.R. No. 160854, 3 March 2006, 484 SCRA 33, 44.

However, it is also true that while certain forms of employment require the performance of usual or desirable functions and exceed one year, these do not necessarily result in regular employment under Article 280 of the Labor Code.[23] Under the Civil Code, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with predetermined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.[24]

The decisive determinant in term employment is the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which must necessarily come, although it may not be known when. Seasonal employment and employment for a particular project are instances of employment in which a period, where not expressly set down, is necessarily implied.[25]

Respondents maintain that the contracts of employment entered into by petitioners with INNODATA were valid fixed-term employment contracts which were automatically terminated at the expiry of the period stipulated therein, *i.e.*, 16 February 2000.

The Court disagrees.

While this Court has recognized the validity of fixed-term employment contracts, it has consistently held that this is the exception rather than the general rule. More importantly, a fixed-term employment is valid only under certain circumstances. In *Brent*, the very same case invoked by respondents, the Court identified several circumstances wherein a **fixed-term is an essential and natural appurtenance**, to wit:

> Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance:

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[23] *Millares v. National Labor Relations Commission*, 434 Phil. 524, 538.

[24] *Brent School, Inc. v. Zamora*, *supra* note 12 at 710.

[25] *Id*.

overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. Similarly, despite the provisions of Article 280, Policy Instructions No. 8 of the Minister of Labor implicitly recognize that certain company officials may be elected for what would amount to fixed periods, at the expiration of which they would have to stand down, in providing that these officials, "x x may lose their jobs as president, executive vice-president or vice president, *etc*. because the stockholders or the board of directors for one reason or another did not reelect them."[26]

As a matter of fact, the Court, in its oft-quoted decision in *Brent*, also issued a stern admonition that where, from the circumstances, it is apparent that the period was imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy.[27]

After considering petitioners' contracts in their entirety, as well as the circumstances surrounding petitioners' employment at INNODATA, the Court is convinced that the terms fixed therein were meant only to circumvent petitioners' right to security of tenure and are, therefore, invalid.

The contracts of employment submitted by respondents are highly suspect for not only being ambiguous, but also for appearing to be tampered with.

Petitioners alleged that their employment contracts with INNODATA became effective 16 February 1999, and the first day they reported for work was on 17 February 1999. The Certificate of Employment issued by the HRAD Manager of

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[26] *Id.* at 714.

[27] *Id*.

INNODATA also indicated that petitioners Price and Domingo were employed by INNODATA on 17 February 1999.

However, respondents asserted before the Labor Arbiter that petitioners' employment contracts were effective only on 6 September 1999. They later on admitted in their Memorandum filed with this Court that petitioners were originally hired on 16 February 1999 but the project for which they were employed was completed before the expiration of one year. Petitioners were merely rehired on 6 September 1999 for a new project. While respondents submitted employment contracts with 6 September 1999 as beginning date of effectivity, it is obvious that in one of them, the original beginning date of effectivity, 16 February 1999, was merely crossed out and replaced with 6 September 1999. The copies of the employment contracts submitted by petitioners bore similar alterations.

The Court notes that the attempt to change the beginning date of effectivity of petitioners' contracts was very crudely done. The alterations are very obvious, and they have not been initialed by the petitioners to indicate their assent to the same. If the contracts were truly fixed-term contracts, then a change in the term or period agreed upon is material and would already constitute a novation of the original contract.

Such modification and denial by respondents as to the real beginning date of petitioners' employment contracts render the said contracts ambiguous. The contracts themselves state that they would be effective until 16 February 2000 for a period of one year. If the contracts took effect only on 6 September 1999, then its period of effectivity would obviously be less than one year, or for a period of only about five months.

Obviously, respondents wanted to make it appear that petitioners worked for INNODATA for a period of less than one year. The only reason the Court can discern from such a move on respondents' part is so that they can preclude petitioners from acquiring regular status based on their employment for one year. Nonetheless, the Court emphasizes that it has already found that petitioners should be considered regular employees of INNODATA by the nature of the work they performed as

formatters, which was necessary in the business or trade of INNODATA. Hence, the total period of their employment becomes irrelevant.

Even assuming that petitioners' length of employment is material, given respondents' muddled assertions, this Court adheres to its pronouncement in *Villanueva v. National Labor Relations Commission*,[28] to the effect that where a contract of employment, being a contract of adhesion, is ambiguous, any ambiguity therein should be construed strictly against the party who prepared it. The Court is, thus, compelled to conclude that petitioners' contracts of employment became effective on 16 February 1999, and that they were already working continuously for INNODATA for a year.

Further attempting to exonerate itself from any liability for illegal dismissal, INNODATA contends that petitioners were project employees whose employment ceased at the end of a specific project or undertaking. This contention is specious and devoid of merit.

In *Philex Mining Corp. v. National Labor Relations Commission*,[29] the Court defined "project employees" as those workers hired (1) for a specific project or undertaking, and wherein (2) the completion or termination of such project has been determined at the time of the engagement of the employee.

Scrutinizing petitioners' employment contracts with INNODATA, however, failed to reveal any mention therein of what specific project or undertaking petitioners were hired for. Although the contracts made general references to a "project," such project was neither named nor described at all therein. The conclusion by the Court of Appeals that petitioners were hired for the Earthweb project is not supported by any evidence on record. The one-year period for which petitioners were hired was simply fixed in the employment contracts without reference or connection to the period required for the completion of a

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[28] *Supra* note 7 at 646.

[29] 371 Phil. 48, 57 (1999).

project. More importantly, there is also a dearth of evidence that such project or undertaking had already been completed or terminated to justify the dismissal of petitioners. In fact, petitioners alleged — and respondents failed to dispute that petitioners did not work on just one project, but continuously worked for a series of projects for various clients of INNODATA.

In *Magcalas v. National Labor Relations Commission*,[30] the Court struck down a similar claim by the employer therein that the dismissed employees were fixed-term and project employees. The Court here reiterates the rule that all doubts, uncertainties, ambiguities and insufficiencies should be resolved in favor of labor. It is a well-entrenched doctrine that in illegal dismissal cases, the employer has the burden of proof. This burden was not discharged in the present case.

As a final observation, the Court also takes note of several other provisions in petitioners' employment contracts that display utter disregard for their security of tenure. Despite fixing a period or term of employment, *i.e.*, one year, INNODATA reserved the right to pre-terminate petitioners' employment under the following circumstances:

> 6.1 x x x Further should the Company have no more need for the EMPLOYEE's services on **account of completion of the project**, lack of work (sic) business losses, introduction of new production processes and techniques, which will negate the need for personnel, and/or overstaffing, this contract maybe **pre-terminated** by the EMPLOYER upon giving of three (3) days notice to the employee.
>
> x x x x x x x x x
>
> 6.4 The EMPLOYEE or the EMPLOYER may **pre-terminate** this CONTRACT, **with or without cause**, by giving at least Fifteen – (15) [day] notice to that effect. Provided, that such pre-termination shall be effective only upon issuance of the appropriate clearance in favor of the said EMPLOYEE. (Emphasis ours.)

Pursuant to the afore-quoted provisions, petitioners have no right at all to expect security of tenure, even for the supposedly

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[30] 336 Phil. 433, 449 (1997).

one-year period of employment provided in their contracts, because they can still be pre-terminated (1) upon the completion of an unspecified project; or (2) with or without cause, for as long as they are given a three-day notice. Such contract provisions are repugnant to the basic tenet in labor law that no employee may be terminated except for just or authorized cause.

Under Section 3, Article XVI of the Constitution, it is the policy of the State to assure the workers of security of tenure and free them from the bondage of uncertainty of tenure woven by some employers into their contracts of employment. This was exactly the purpose of the legislators in drafting Article 280 of the Labor Code — to prevent the circumvention by unscrupulous employers of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment.

In all, respondents' insistence that it can legally dismiss petitioners on the ground that their term of employment has expired is untenable. To reiterate, petitioners, being regular employees of INNODATA, are entitled to security of tenure. In the words of Article 279 of the Labor Code:

> ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

By virtue of the foregoing, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, with full back wages computed from the time of dismissal up to the time of actual reinstatement.

Considering that reinstatement is no longer possible on the ground that INNODATA had ceased its operations in June 2002 due to business losses, the proper award is separation pay

equivalent to one month pay [31] for every year of service, to be computed from the commencement of their employment up to the closure of INNODATA.

The amount of back wages awarded to petitioners must be computed from the time petitioners were illegally dismissed until the time INNODATA ceased its operations in June 2002.[32]

Petitioners are further entitled to attorney's fees equivalent to 10% of the total monetary award herein, for having been forced to litigate and incur expenses to protect their rights and interests herein.

Finally, unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. Although as an exception, corporate directors and officers are solidarily held liable with the corporation, where terminations of employment are done with malice or in bad faith,[33] in the absence of evidence that they acted with malice or bad faith herein, the Court exempts the individual respondents, Leo Rabang and Jane Navarette, from any personal liability for the illegal dismissal of petitioners.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The Decision dated 25 September 2006 and Resolution dated 15 June 2007 of the Court of Appeals in CA-G.R. SP No. 72795 are hereby *REVERSED* and *SET ASIDE*. Respondent Innodata Philippines, Inc./Innodata Corporation is

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[31] *Atlas Farms, Inc. v. National Labor Relations Commission*, 440 Phil. 620, 636 (2002); *Chavez v. National Labor Relations Commission*, G.R. No. 146530, 17 January 2005, 448 SCRA 478, 496; *Philippine Tobacco Flue-Curing and Redrying Corporation v. National Labor Relations Commission*, 360 Phil. 218, 244 (1998); *Angeles v. Fernandez*, G.R. No. 160213, 30 January 2007, 513 SCRA 378, 388.

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

[33] *Uichico v. National Labor Relations Commission*, 339 Phil. 242, 251-252 (1997).

ORDERED to pay petitioners Cherry J. Price, Stephanie G. Domingo, and Lolita Arbilera: (a) separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service, to be computed from the commencement of their employment up to the date respondent Innodata Philippines, Inc./Innodata Corporation ceased operations; (b) full backwages, computed from the time petitioners' compensation was withheld from them up to the time respondent Innodata Philippines, Inc./ Innodata Corporation ceased operations; and (3) 10% of the total monetary award as attorney's fees. Costs against respondent Innodata Philippines, Inc./Innodata Corporation.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179402. September 30, 2008]

NATIONAL UNION OF WORKERS IN HOTELS, RESTAURANTS AND ALLIED INDUSTRIES — MANILA PAVILION HOTEL CHAPTER, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ACESITE PHILIPPINES HOTEL CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNION SHOP CLAUSE; CONSTRUED. — "Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the

obligation to acquire or retain union membership as a condition affecting employment. Article 248 (e) of the Labor Code recognizes the effectivity of a union shop clause: Art. 248. *Unfair labor practices of employers.* (e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. **Nothing in this Code or in any other law shall prevent the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement** x x x .

2. ID.; ID.; UNION SHOP AND CLOSED SHOP CLAUSES; RATIONALE. — The law allows stipulations for "union shop" and "closed shop" as a means of encouraging workers to join and support the union of their choice in the protection of their rights and interests *vis-à-vis* the employer. By thus promoting unionism, workers are able to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. In *Villar v. Inciong*, this Court held that employees have the right to disaffiliate from their union and form a new organization of their own; however, they must suffer the consequences of their separation from the union under the security clause of the Collective Bargaining Agreement.

3. ID.; ID.; UNFAIR LABOR PRACTICE; DISMISSAL OF EMPLOYEE BY A COMPANY PURSUANT TO A LABOR UNION'S DEMAND IN ACCORDANCE WITH A UNION SECURITY AGREEMENT DOES NOT CONSTITUTE AN UNFAIR LABOR PRACTICE; CASE AT BAR. — This Court, in *Malayang Samahan ng Manggagawa sa M. Greenfield v. Ramos* clearly stated the general rule: the dismissal of an employee by the company pursuant to a labor union's demand in accordance with a union security agreement does not constitute unfair labor practice. An employer is not considered guilty of unfair labor practice if it merely complied in good faith with the request of the certified union for the dismissal of employees expelled from the union pursuant to the union security clause in the Collective Bargaining Agreement. In the case at bar, there is even less possibility of sustaining a finding

of guilt for unfair labor practice where respondent did not dismiss the 36 employees, despite the insistence of HIMPHLU, the sole bargaining agent for the rank and file employees of the Hotel, on the basis of the union security clause of the Collective Bargaining Agreement. The only act attributed to the respondent is its issuance of the Notices which, contrary to being an unfair labor practice, even afforded the employees involved a chance to be heard.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF RESTS UPON PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE. — NUWHRAIN has the burden of proving its allegation that Norma Azores and Bernardo Corpus, Jr. did make the statements being attributed to them. The burden of proof rests upon the party who asserts the affirmative of an issue. And in labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, which NUWHRAIN failed to discharge in the present case.

5. ID.; CIVIL PROCEDURE; FINDINGS OF ADMINISTRATIVE AGENCIES OF THE DEPARTMENT OF LABOR; GENERALLY ACCORDED NOT ONLY RESPECT, BUT ALSO FINALITY. — In the case at bar, the NLRC found, and the Court of Appeals affirmed, that the officers of the respondent and the Hotel did not make statements that would have constituted unfair labor practice. Findings of fact of the NLRC are given much weight and are considered conclusive by this Court. It is only when such findings are not substantially supported by the records that this Court will step in and make its independent evaluation of the facts. Considering the expertise of these agencies in matters pertaining to labor disputes, the findings of administrative agencies of the Department of Labor are generally accorded not only respect, but also finality.

APPEARANCES OF COUNSEL

Sentro ng Alternatibong Lingap Panligal for petitioner.

Gancayco Balasbas & Associates Law Offices for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 30 May 2007 rendered by the Court of Appeals in CA-G.R. SP No. 96171, which affirmed the Resolution[2] dated 5 May 2006 of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05, dismissing for lack of merit the complaint for unfair labor practice filed by petitioner National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel (NUWHRAIN) against Manila Pavilion Hotel (the Hotel).

Petitioner NUWHRAIN is a legitimate labor organization composed of rank-and-file employees of the Hotel,[3] while respondent Acesite Philippines Hotel Corporation is the owner and operator of said Hotel.[4]

The factual antecedents of the instant Petition are as follows:

The Hotel entered into a Collective Bargaining Agreement with HI-MANILA PAVILION HOTEL LABOR UNION (HIMPHLU), the exclusive bargaining agent of the rank-and-file employees of the Hotel. Both parties consented that the representation aspect and other non-economic provisions of the Collective Bargaining Agreement were to be effective for five years or until 30 June 2005; and the economic provisions of the same were to be effective for three years or until 30 June 2003. The parties subsequently re-negotiated the economic provisions of the Collective Bargaining Agreement and extended

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[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 26-39.

[2] Signed by Presiding Commissioner Lourdes C. Javier and Commissioners Tito F. Genilo and Gregorio O. Bilog III. *Id.* at 152-166.

[3] *Id.* at 4.

[4] *Id.*

the term of their effectivity for another two years or until 30 June 2005.[5]

During the 60-day freedom period which preceded the expiration of the Collective Bargaining Agreement, starting on 1 May 2005 and ending on 30 June 2005, the Hotel and HIMPHLU negotiated the extension of the provisions of the existing Collective Bargaining Agreement for two years, effective 1 July 2005 to 30 June 2007. The parties signed the Memorandum of Agreement on 20 May 2005 and the employees ratified it on 27 May 2005.[6]

On 21 June 2005, NUWHRAIN was accorded by the Labor Relations Division of the Department of Labor and Employment (DOLE) the status of a legitimate labor organization. [7] Thereafter, NUWHRAIN exercised the right to challenge the majority status of the incumbent union, HIMPHLU, by filing a Petition for Certification Election on 28 June 2005.[8]

On 5 July 2007, the Industrial Relations Division of the DOLE allowed the registration of the Memorandum of Agreement executed between HIMPHLU and the Hotel, extending the effectivity of the existing Collective Bargaining Agreement for another two years.[9]

After the lapse of the 60-day freedom period, but pending the disposition of the Petition for Certification Election filed by NUWHRAIN, HIMPHLU served the Hotel with a written demand dated 28 July 2005[10] for the dismissal of 36 employees following their expulsion from HIMPHLU for alleged acts of disloyalty and violation of its Constitution and by-laws. An Investigation Report[11] was attached to the said written demand, stating that

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[5] *Id.* at 228.

[6] *Id.* at 264-267.

[7] *Id.* at 270.

[8] *Id.* at 268-269.

[9] *Id.* at 280.

[10] *Id.* at 66.

[11] *Id.* at 67-68.

the 36 employees, who were members of HIMPHLU, joined NUWHRAIN, in violation of Section 2, Article IV of the Collective Bargaining Agreement, which provided for a union security clause that reads:[12]

> Section 2. DISMISSAL PURSUANT TO UNION SECURITY CLAUSE. Accordingly, failure to join the UNION within the period specified in the immediately preceding section or failure to maintain membership with the UNION in good standing either through resignation or expulsion from the UNION in accordance with the UNION's Constitution and by-laws due to **disloyalty, joining another union** or non-payment of UNION dues shall be a **ground for the UNION to demand the dismissal** from the HOTEL of the employee concerned. **The demand shall be accompanied by the UNION's investigation report and the HOTEL shall act accordingly subject to existing laws and jurisprudence on the matter, provided, however, that the UNION shall hold the HOTEL free and harmless from any and all liabilities that may arise should the dismissed employee question in any manner the dismissal. The HOTEL shall not, however, be compelled to act on any such UNION demand if made within a period of sixty (60) days prior to the expiry date of this agreement.** (Emphasis provided)

On 1 August 2005, the Hotel issued Disciplinary Action Notices[13] (Notices) to the 36 employees identified in the written demand of HIMPHLU. The Notices directed the 36 employees to submit a written explanation for their alleged acts of disloyalty and violation of the union security clause for which HIMPHLU sought their dismissal.

The Hotel called the contending unions and the employees concerned for a reconciliatory conference in an attempt to avoid the dismissal of the 36 employees. The reconciliatory conferences facilitated by the Hotel were held on 5 August 2005 and 1 September 2005.[14] However, NUWHRAIN proceeded to file a Notice of Strike before the National Conciliation and Mediation

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[12] *Id.* at 92.

[13] *Id.* at 70.

[14] *Id.* at 28.

Board (NCMB) on 8 September 2005 on the ground of unfair labor practice under Article 248, paragraphs (a) and (b) of the Labor Code.[15] The Secretary of Labor intervened and certified the case for compulsory arbitration with the NLRC. The case was docketed as NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05, entitled *IN RE: Labor Dispute at Manila Pavilion Hotel*.[16]

NUWHRAIN asserted that the Hotel committed unfair labor practice when it issued the Notices to the 36 employees who switched allegiance from HIMPHLU to NUWHRAIN. During the reconciliatory conference held on 5 August 2005, respondent's Vice President, Norma Azores, stated her preference to deal with HIMPHLU, while blaming NUWHRAIN for the labor problems of the Hotel. On 1 September 2005, the Resident Manager of the Hotel, Bernardo Corpus, Jr., implored NUWHRAIN's members to withdraw their Petition for Certification Election and reaffirm their membership in HIMPHLU. The Notices and the statements made by the officers of the respondent and the Hotel were allegedly intended to intimidate and coerce the employees in the exercise of their right to self-organization. NUWHRAIN claimed that it was entitled to moral damages in the amount of ₱50,000.00 and exemplary damages of ₱20,000.00.[17]

Respondent countered that it merely complied with its contractual obligations with HIMPHLU when it issued the assailed Notices, and clarified that none of the 36 employees were

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[15] CA *rollo*, p. 253. ART 248. UNFAIR LABOR PRACTICES OF EMPLOYERS. It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

[16] Records, pp. 6-8.

[17] *Rollo*, pp. 57-58.

dismissed by the Hotel. It further denied that respondent's Vice President Norma Azores and the Hotel's Resident Manager Bernardo Corpus, Jr. made the statements attributed to them, purportedly expressing their preference for HIMPHLU during the reconciliatory conferences. Thus, respondent insisted that it did not commit unfair labor practice, nor was it liable for moral and exemplary damages.[18]

In a Resolution[19] dated 5 May 2006, the NLRC pronounced that the Hotel was not guilty of unfair labor practice. Firstly, the NLRC adjudged that the execution of the Memorandum of Agreement between respondent and HIMPHLU, extending the effectivity of the existing Collective Bargaining Agreement, was entered into with the view of responding to the employees' economic needs, and not intended to interfere with or restrain the exercise of the right to self-organization of NUWHRAIN's members. Secondly, the NLRC determined that the issuance of the Notices directing the 36 employees to explain why they should not be dismissed was in compliance with the Collective Bargaining Agreement provisions regarding the union security clause. Even thereafter, the Hotel had not acted improperly as it did not wrongfully terminate any of the 36 employees. Thirdly, the NLRC interpreted the statements made by the officials of respondent and the Hotel during the reconciliatory conferences — encouraging the withdrawal of the Petition for Certification Election and the reaffirmation by the 36 employees of their membership in HIMPHLU — as proposed solutions to avoid the dismissal of the said employees. The NLRC concluded that these statements did not constitute unfair labor practice for they could not have coerced or influenced either of the contending unions, both of whom did not agree in the suggested course of action or to any other manner of settling the dispute. Finally, the NLRC declared that the claim for moral and exemplary damages of NUWHRAIN lacked sufficient factual and legal bases.

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[18] *Id.* at 133-134.

[19] *Id.* at 152-166.

NUWHRAIN filed a Motion for Reconsideration of the foregoing NLRC Resolution. It was denied by the NLRC in another Resolution dated 30 June 2006.[20] Thus, NUWHRAIN filed a Petition for *Certiorari* before the Court of Appeals, docketed as C.A. G.R. SP No. 96171.

In the meantime, on 16 June 2006, the Certification Election for regular rank and file employees of the Hotel was held, which HIMPHLU won. It was accordingly certified as the exclusive bargaining agent for rank and file employees of the Hotel.[21]

On 30 May 2007, the Court of Appeals promulgated its Decision[22] in C.A. G.R. SP No. 96171, upholding the Resolution dated 5 May 2006 of the NLRC in NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05. It declared that the Hotel had acted prudently when it issued the Notices to the 36 employees after HIMPHLU demanded their dismissal. It clarified that these Notices did not amount to the termination of the employees concerned but merely sought their explanation on why the union security clause should not be applied to them. The appellate court also gave credence to the denial by the officers of the respondent and the Hotel that they made statements favoring HIMPHLU over NUWHRAIN during the reconciliatory conferences. The Court of Appeals further noted that the unhampered organization and registration of NUWHRAIN negated its allegation that the Hotel required its employees not to join a labor organization as a condition for their employment.

NUWHRAIN's Motion for Reconsideration of the aforementioned Decision of the Court of Appeals was denied by the same court in a Resolution dated 24 August 2007.[23]

Hence, the present Petition, in which NUWHRAIN makes the following assignment of errors:

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[20] *Id.* at 181-182.

[21] *Id.* at 300-306.

[22] *Id.* at 26-39.

[23] *Id.* at 40.

I

THE COURT OF APPEALS GAVE MORE PROBATIVE VALUE TO RESPONDENT HOTEL'S GENERAL AND UNSWORN DENIAL VERSUS THAT OF PETITIONER'S SWORN TESTIMONY NARRATING RESPONDENT'S HOTEL'S VIOLATION OF PETITIONER'S RIGHT TO SELF ORGANIZATION. SUCH A RULING CONTRADICTS EXISTING JURISPRUDENCE SUCH AS *MASAGANA CONCRETE PRODUCTS INC. V. NLRC*, G.R. NO. 106916, SEPTEMBER 3, 1999; *JRS BUSINESS CORPORATION V. NLRC*, 246 SCRA 445 [1995]; and *ASUNCION V. NLRC*, 362 SCRA 56 [2001].

II

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT HOTEL IS NOT GUILTY OF UNFAIR LABOR PRACTICE CONTRARY TO ARTICLE 248 OF THE LABOR CODE AND THE SUPREME COURT'S RULING IN *PROGRESSIVE DEVELOPMENT CORPORATION V. CIR*, 80 SCRA 434 [1977] and *INSULAR LIFE ASSURANCE CO. LTC EMPLOYEES ASSOCIATION-NATU V. THE INSULAR LIFE ASSURANCE CO. LTD.*, 37 SCRA 244 [1971].[24]

The instant Petition lacks merit, and must accordingly be denied.

NUWHRAIN maintains that the respondent committed unfair labor practice when (1) the Hotel issued the Notices to the 36 employees, former members of HIMPHLU, who switched allegiance to NUWHRAIN; and (2) the officers of the respondent and the Hotel allegedly uttered statements during the reconciliatory conferences indicating their preference for HIMPHLU and their disapproval of NUWHRAIN. This argument is specious.

The records clearly show that the Notices were issued after HIMPHLU served the Hotel with a letter dated 28 July 2005, demanding the dismissal of 36 of its former members who joined NUWHRAIN. In its letter, HIMPHLU alleged that it had found these members guilty of disloyalty and demanded their dismissal pursuant to the union security clause in the Collective Bargaining

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

Agreement. Had the Hotel totally ignored this demand, as NUWHRAIN suggests it should have done, the Hotel would have been subjected to a suit for its failure to comply with the terms of the Collective Bargaining Agreement.

"Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment.[25] Article 248(e) of the Labor Code recognizes the effectivity of a union shop clause:

Art. 248. *Unfair labor practices of employers*.

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. **Nothing in this Code or in any other law shall prevent the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement** x x x. (Emphasis supplied.)

The law allows stipulations for "union shop" and "closed shop" as a means of encouraging workers to join and support the union of their choice in the protection of their rights and interests *vis-à-vis* the employer. By thus promoting unionism, workers are able to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer.[26] In *Villar v. Inciong*,[27] this Court held that employees have the right to

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[25] Azucena, C.A., *The Labor Code with Comments and Cases, volume 2, Fifth Edition*, 2004, p. 242.

[26] *Del Monte Philippines, Inc. v. Saldivar*, G.R. No. 158620, 11 October 2006, 504 SCRA 192, 203-204; and *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*, G.R. Nos. 58768-70, 29 December 1989, 180 SCRA 668, 679-680.

[27] G.R. Nos. 50283-84, 20 April 1983, 121 SCRA 444, 464.

disaffiliate from their union and form a new organization of their own; however, they must suffer the consequences of their separation from the union under the security clause of the Collective Bargaining Agreement.

In the present case, the Collective Bargaining Agreement includes a union security provision.[28] To avoid the clear possibility of liability for breaching the union security clause of the Collective Bargaining Agreement and to protect its own interests, the only sensible option left to the Hotel, upon its receipt of the demand of HIMPHLU for the dismissal of the 36 employees, was to conduct its own inquiry so as to make its own findings on whether there was sufficient ground to dismiss the said employees who defected from HIMPHLU. The issuance by the respondent of the Notices requiring the 36 employees to submit their explanations to the charges against them was the reasonable and logical first step in a fair investigation. It is important to note that the Hotel did not take further steps to terminate the 36 employees. Instead, it arranged for reconciliatory conferences between the contending unions in order to avert the possibility of dismissing the 36 employees for violation of the union security clause of the Collective Bargaining Agreement.

This Court, in *Malayang Samahan ng Manggagawa sa M. Greenfield v. Ramos*[29] clearly stated the general rule: the dismissal of an employee by the company pursuant to a labor union's demand in accordance with a union security agreement does not constitute unfair labor practice. An employer is not considered guilty of unfair labor practice if it merely complied in good faith with the request of the certified union for the dismissal of

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[28] Section 1 of Article IV of the Collective Bargaining Agreement reads:

Section 1. UNION SHOP. All UNION members must, as a condition for continued employment with the HOTEL, maintain their membership with the UNION in good standing for the duration of this Agreement. Likewise, as a condition for continued employment with the HOTEL, all employees who shall become permanent or regular during the effectivity of this Agreement must join the UNION Automatic membership within thirty (30) days from the date of their regular employment. (Records, p. 63).

[29] 383 Phil. 329, 373 (2000).

employees expelled from the union pursuant to the union security clause in the Collective Bargaining Agreement.[30] In the case at bar, there is even less possibility of sustaining a finding of guilt for unfair labor practice where respondent did not dismiss the 36 employees, despite the insistence of HIMPHLU, the sole bargaining agent for the rank and file employees of the Hotel, on the basis of the union security clause of the Collective Bargaining Agreement. The only act attributed to the respondent is its issuance of the Notices which, contrary to being an unfair labor practice, even afforded the employees involved a chance to be heard.

The cases cited by NUWHRAIN are not applicable to the present case given their diverse factual backgrounds. In *Progressive Development Corporation v. Court of Industrial Relations*,[31] the Court declared the employer guilty of unfair labor practice for singling out its workers who refused to join the employer's preferred union by not giving them work assignments and regular status, and eventually dismissing said employees. The employer was found guilty of unfair labor practice in *Insular Life Assurance Co., Ltd., Employees Association-NATU v. Insular Life Assurance Co., Ltd.*,[32] for (1) the dismissal of some of its striking employees without even giving them an opportunity to explain their side; and (2) the acts of discrimination, including the delayed reinstatement of striking employees and the offering of bribes, bonuses, and wage increases to loyal employees after refusing to bargain with the union. None of these acts were attributed to the respondent in the present case.

NUWHRAIN claimed that during the reconciliatory conferences, respondent's Vice President Norma Azores expressed her preference to deal with HIMPHLU, while blaming NUWHRAIN for the Hotel's labor problems; and the Hotel's Resident Manager Bernardo Corpus, Jr. implored NUWHRAINs'

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[30] *Soriano v. Atienza*, G.R. No. 68619, 16 March 1989, 171 SCRA 284, 289-290.

[31] 170 Phil. 455 (1977).

[32] 147 Phil. 194 (1971).

members to withdraw their Petition for Certification Election and reaffirm their membership in HIMPHLU. Before the Court of Appeals, respondent denied that such statements were made and that the officers of the respondent and the Hotel were merely misquoted. During the reconciliatory conferences, wherein the officers of the respondent and the Hotel acted as mediators, one of the proposals laid on the table to settle the dispute between the unions and preclude the dismissal of the 36 employees was for NUWHRAIN to withdraw its Petition for Certification Election and, in return, for HIMPHLU to re-accept the employees without sanctions.

Still, NUWHRAIN asserts that the sworn testimony signed by its six union members that the officers of the respondent and the Hotel did utter the offending statements deserve more credence than the unsworn denial of respondent.

NUWHRAIN has the burden of proving its allegation that Norma Azores and Bernardo Corpus, Jr. did make the statements being attributed to them. The burden of proof rests upon the party who asserts the affirmative of an issue.[33] And in labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[34] which NUWHRAIN failed to discharge in the present case.

Undoubtedly, the members of NUWHRAIN would owe their loyalty to their union, a natural bias which somewhat puts into question their credibility as witnesses, especially since the success of this case would also redound to their benefit. The fact that six members of the union signed a single statement, instead of each member presenting their sincere and individual narrations of events, gives the impression that it was signed in a perfunctory

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[33] *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1000 (1999); *Republic v. Obrecido III*, G.R. No. 154380, 5 October 2005, 472 SCRA 114, 123; *Noceda v. Court of Appeals*, 372 Phil. 383, 399 (1999).

[34] *Caltex Refinery Employees Association v. Brilliantes*, 344 Phil. 624, 635 (1997); *De La Salle University v. De La Salle University Employees Association*, 386 Phil. 569, 586 (2000).

manner and motivated by a sense of union solidarity. The self-serving statement signed by six of NUWHRAIN's members have very little weight, even if made under oath, absent any other independent evidence which indicates that the officers of the respondent and the Hotel made such hostile and coercive utterances that tend to interfere or influence the employees' exercise of the right to self-organization.

In the case at bar, the NLRC found, and the Court of Appeals affirmed, that the officers of the respondent and the Hotel did not make statements that would have constituted unfair labor practice. Findings of fact of the NLRC are given much weight and are considered conclusive by this Court. It is only when such findings are not substantially supported by the records that this Court will step in and make its independent evaluation of the facts.[35] Considering the expertise of these agencies in matters pertaining to labor disputes, the findings of administrative agencies of the Department of Labor are generally accorded not only respect, but also finality.[36]

Even the surrounding circumstances would contradict NUWHRAIN's allegation that the respondent interfered with or coerced its employees in their choice of union membership. In their Reply before the NLRC, NUWHRAIN admitted that before issuing its Notices, the respondent maintained a neutral stand in the dispute between HIMPHLU and NUWHRAIN.[37] Neither did the respondent threaten the 36 employees who shifted their allegiance to NUWHRAIN with any form of reprisal; they were not dismissed for their affiliation with NUWHRAIN. The records are bereft of any instance that would show that respondent rode roughshod over its employees' freedom to decide which union to join.

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[35] *National Union of Workers in Hotels and Allied Industries v. National Labor Relations Commission*, 350 Phil. 641, 652 (1998); *University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union*, 414 Phil. 522, 534-535 (2001).

[36] *De La Salle University v. De La Salle University Employees Association*, *supra* note 34 at 586.

[37] *Rollo*, p. 116.

In all, respondent had not committed any act which would constitute unfair labor practice.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The assailed Decision dated 30 May 2007 of the Court of Appeals in CA-G.R. SP No. 96171 is hereby *AFFIRMED*. Costs against petitioner NUWHRAIN.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181631. September 30, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE BALINAS, JR.,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT; REASON. — It is doctrinal that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of a witness and is in the best position to discern whether he is telling the truth. It is likewise settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.

2. ID.; ID.; ID.; TESTIMONY OF A SOLE EYEWITNESS IS SUFFICIENT TO SUPPORT A CONVICTION SO LONG AS IT IS CLEAR, STRAIGHTFORWARD AND WORTHY OF CREDENCE BY THE TRIAL COURT. — Time and again, this Court has ruled that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; BURDEN OF PROOF IS SHIFTED TO ACCUSED WHO INTERPOSES SELF-DEFENSE TO ESTABLISH THAT THE KILLING WAS JUSTIFIED. — In light of the established evidence against appellant, his theory of self-defense falters. While the cardinal rule in criminal law is that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime, but only in defense of one's self. In interposing self-defense, appellant admits authorship of the killing and the burden of proof is shifted to him to establish that killing was justified.

4. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ESSENCE. — The courts below correctly appreciated the circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim. While the stabbing was preceded by a brief argument between appellant and Sayson, it cannot be gainsaid that the attack was indeed sudden and unexpected. Moreover, the fact that appellant went around the store in order to catch up with Sayson showed his tenacity to execute the crime.

5. ID.; MURDER; CIVIL INDEMNITY, MORAL, EXEMPLARY AND TEMPERATE DAMAGES, AWARDED IN CASE AT BAR. — In line with recent jurisprudence, we find the award of civil indemnity in the amount of ₱50,000.00 for the death of Sayson correct and proper without any need of proof other than the commission of the crime. We increase the award of moral damages to ₱50,000.00 in accordance with our ruling in *People v. Sison*. The award of exemplary damages of

₱25,000.00 is likewise warranted because of the presence of the aggravating circumstance of treachery. Exemplary damages are awarded when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying. Although the prosecution presented evidence that the heirs had incurred expenses, no receipts were presented. The award of temperate damages, in the amount of ₱25,000.00, to the heirs of the victim is justified. Temperate damages are awarded where no documentary evidence of actual damages was presented in the trial because it is reasonable to presume that, when death occurs, the family of the victim incurred expenses for the wake and funeral.

6. CIVIL LAW; DAMAGES; ACTUAL DAMAGES AND LOSS OF INCOME, DELETED; TRIAL COURT CANNOT RELY ON SPECULATION, CONJECTURE OR GUESSWORK TO ARRIVE AT FACT AND AMOUNT OF DAMAGES— However, we delete the award of ₱40,000.00 in actual damages and ₱150,000.00 for loss of income granted by the trial court for it cannot simply rely on speculation, conjecture or guesswork as to the fact and amount of damages, but is required to depend upon competent proof that the claimant had suffered and on evidence of the actual amount thereof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Before us on appeal is the Decision[1] of the Court of Appeals affirming the judgment[2] of the Regional Trial Court[3] of Kabankalan

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[1] *Rollo,* pp. 7-12; penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justices Pampio A. Abarintos and Stephen C. Cruz.

[2] CA *rollo,* pp. 16-21.

[3] Presided by Judge Henry D. Arles.

City, Negros Occidental in Criminal Case No. 2000-2445 finding Jose Balinas, Jr. (appellant) guilty of the crime of murder.

Appellant was charged with murder under the following Information:

> That on or about the 7th day of [January 2000], in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one COLUMBAN M. SAYSON, thereby inflicting stab wounds upon him which caused his death.[4]

The facts, as narrated by Romeo Mateo (Mateo), the prosecution's lone witness, follow.

On 7 January 2000, Mateo was watching a *cara y cruz* game in Sitio Bailan, Brgy. Dancalan, Ilog, Negros Occidental at around 2:00 a.m. He noticed appellant and the latter's father, Jose Balinas, Sr. (Balinas, Sr.), exchanging words over a bet. Mateo overheard Balinas, Sr. that his bet was ₱300.00 while appellant was insisting that it was only ₱200.00. Afterwards, Columban Sayson (Sayson) inquired from Balinas, Sr. about the incident. Upon learning the cause of the argument, Sayson suggested that the difference be taken from the collection.[5] Sensing an impending conflict, Mateo went to a nearby store[6] while appellant went back to his house. Later, he saw Sayson, accompanied by Tongtong Gomez, run into appellant in the store. Thereat, appellant confronted Sayson about the latter's intervention earlier inside the gambling place. Sayson replied that he wanted to settle things for the sake of peace. Thereafter, Sayson and Gomez left the store but appellant overtook the duo and stabbed Sayson twice on the chest. Appellant immediately ran away while Sayson shouted for help. During the entire stabbing incident, Mateo was situated four arms length from the trio.[7]

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[4] Records, p. 1.

[5] TSN, 6 August 2001, pp. 4-7.

[6] *Id.* at 12.

[7] *Id.* at 8-10.

Sayson died as a result. The death certificate shows that he died from cardio-respiratory arrest, hypovolemic shock due to stab wounds in the chest and hemathorax and pneumothorax.[8]

Although appellant admitted the stabbing, he invoked self-defense. He related that on 7 January 2000 at around 2:00 a.m., Sayson waylaid him by the store and started beating him. He was hit on the chest, left cheek and other body parts. When Sayson persisted in punching him, appellant fought back and stabbed Sayson. After stabbing him, appellant ran towards his house, told his parents about the incident, and surrendered to the police.[9] In support of his testimony, appellant presented an entry in the police blotter to prove that he voluntarily surrendered. The said entry reiterated appellant's claim that he stabbed Sayson because the latter boxed him several times.[10]

After a thorough examination of the evidence presented by the parties, the trial court rendered a decision convicting appellant, the dispositive portion of which reads:

> WHEREFORE, the Court finds accused Jose Balinas, Jr. *y* Gomez, guilty beyond reasonable doubt of the crime of murder as charged qualified by treachery and considering the mitigating circumstance of voluntary surrender thereby sentences him to suffer the penalty of imprisonment of *reclusion perpetua* and to pay the heirs of [the] victim Columban M. Sayson the amount of ₱50,000.00 by way of indemnity by reason of his death, ₱15,000.00 by way of moral damages, ₱40,000.00 by way of actual damages, ₱150,000.00 by way of loss of income and to pay the costs.
>
> It is further ordered that accused be immediately remitted to the National Penitentiary.
>
> SO ORDERED.[11]

The trial court relied on the testimony of the sole prosecution witness and found him to be candid, categorical and straightforward.

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[8] Records, p. 61.

[9] TSN, 4 June 2003, pp. 4-6.

[10] Records, p. 80.

[11] *Id.* at 90.

Furthermore, it observed that the lack of improper motive on the part of the witness lent greater credence to his testimony. It also discredited appellant's claim of self-defense. It held that such defense was not only uncorroborated by any separate competent evidence but is in itself extremely doubtful. The trial court concluded that the suddenness of the attack on the victim constitutes treachery qualifying the crime to murder.[12]

Appellant filed a Notice of Appeal to this Court on 2 February 2004.[13]

In a Resolution dated 6 September 2004 and pursuant to our ruling in *People v. Mateo*,[14] the case was transferred to the Court of Appeals. The appellate court affirmed *in toto* the trial court's ruling. Undaunted, appellant filed a notice of appeal.[15]

On 2 April 2008, the parties were required to simultaneously file their respective supplemental briefs but they opted to adopt their briefs passed upon by the Court of Appeals[16]

Appellant interposes two arguments to exculpate himself from criminal liability. He first invokes self-defense by insisting that it was Sayson, the victim, who initiated the attack. He justifies the use of a bladed weapon as he could not be expected to coolly choose the less deadly weapon in the face of an impending danger. He also avers that he did not give any cause for the aggression of the victim. Appellant also contends that the lower court erred in appreciating the qualifying circumstance of treachery for lack of concrete evidence to prove its presence.[17]

For the appellee, the Office of the Solicitor-General (OSG) argues that appellant failed to corroborate his claim of self-defense. It considers appellant's version of the facts as self-

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[12] *Id.* at 89-90.

[13] *Id.* at 92.

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

[15] *Id.* at 92.

[16] *Rollo,* pp. 19-26.

[17] CA *rollo,* pp. 61-65.

serving and highly suspect. It asserts that treachery attended the commission of the crime considering that the attack on Sayson was sudden and unexpected. Moreover, the OSG points out, the execution of the attack made it impossible for Sayson to defend himself.[18]

The arguments proferred by both parties can be summarized into two issues: (1) whether appellant acted in self-defense and (2) whether the killing was attended by treachery. Essentially, it boils down to the issue of credibility.

It is doctrinal that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of a witness and is in the best position to discern whether he is telling the truth. It is likewise settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[19]

There appears to be no cogent reason to deviate from the findings of the lower courts with respect to the credibility of the lone eyewitness in the instant case.

Mateo, despite being the lone eyewitness to the crime, gave a positive and categorical account of the incident, thus:

Q: How long if you can estimate and recall their exchanging of words of Jose Balinas and Columban Sayson?
A: Just for a short while Jose Balinas, Jr. confronted Columban Sayson why he intervened and then Columban Sayson answered just to settle those things for peace.

Q: What happened after that?
A: After some sort of exchanging words Columban said — many talks many mistakes and then he went away together with

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[18] *Id.* at 104-107.

[19] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 730.

Tongtong Gomez and then Jose Balinas, Jr. went ahead of them, went around the store and overtook them and then he stabbed Columban Sayson.

Q: Where was Columban Sayson hit?

x x x x x x x x x

A: He was hit in front of his body on the chest.

Q: What was the position of Columban Sayson when he was stabbed by Jose Balinas, Jr.?
A: When Jose Balinas, Jr. stabbed him for the first time Columban Sayson asked him – Jr., you are going to [kill] me and then Junior answered, I am not joking and then he stabbed him again.

x x x x x x x x x

Q: What happened to this Columban Sayson after he was stabbed for the second time by Jose Balinas, Jr.?
A: He shouted for help.

Q: How about Jose Balinas, Jr.? After his second stabbed [*sic*] made on Columban Sayson, what did he do, if any?
A: He ran away, sir.

x x x x x x x x x

Q: When Columban Sayson was stabbed by Jose Balinas, Jr., how far were you from them?
A: Very near them.

Q: How near?
A: Four (4) arms[,] length.[20]

Time and again, this Court has ruled that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.[21]

Mateo is considered a disinterested witness and not a whit of ill-motive was attributed to him by appellant.

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[20] TSN, 6 August 2001, pp. 9-10.

[21] *People v. Rivera*, 458 Phil. 856, 873 (2003).

In light of the established evidence against appellant, his theory of self-defense falters. While the cardinal rule in criminal law is that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime, but only in defense of one's self. In interposing self-defense, appellant admits authorship of the killing and the burden of proof is shifted to him to establish that killing was justified.[22]

Appellant's account of the incident and his subsequent plea of self-defense hardly deserve consideration. His testimony is not only uncorroborated but extremely doubtful. We quote with approval the pertinent portion of the appellate court's decision, to wit:

> In the case at bench, We find that based on appellant's version of the events leading up to the killing of Columban, there is no clear and convincing proof that he acted in defense of his life, especially since his life was never in danger in the first place. According to appellant, Columban box[ed] him repeatedly, causing him to almost lose consciousness. However, appellant failed to advance or explain any reason why Columban box[ed] him.
>
> And if it is true that appellant almost lost consciousness because of the beatings he suffered from Columban's fist blows, his claim that he was able to wrest away from this situation and stabbed [*sic*] Columban twice becomes doubtful. Certainly, a person who almost blacked out would be groggy and have a hard time keeping his balance, let alone stab another to death.
>
> Furthermore, appellant's claim is uncorroborated. He failed to present another witness who could testify to the reasons why Columban would attack appellant, the manner in which he attacked appellant and how the latter was able to bounce back and defend himself by stabbing Columban.
>
> Since Dancalan, Ilog, Negros Occidental was then celebrating its fiesta, there were people on the road and yet not one of them stood up and intervened while the incident was going on. Appellant did not even call anyone on the stand to support his claim. As such, [appellant's] version becomes self-serving and highly suspect.

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[22] *People v. Herrera*, 422 Phil. 830, 850 (2001).

In contrast, the prosecution had Romeo Mateo who positively [unidentified] appellant as the one who stabbed Columban twice. Romeo is familiar with appellant and he was only about four arms[']length away from the two when the incident happened. During the entire course of the proceedings in the trial court and even in his appeal brief, appellant never once attempted to ascribe or prove ill will on the part of Romeo Mateo for testifying as he did. The presumption that he is not actuated by any malice or base motive and that he merely testified to help bring Columban's assailant before the bars of justice remain unrebutted.

All told, the trial court correctly gave full weight and credit to the [prosecution's] case which led to the conviction of appellant.[23]

The courts below correctly appreciated the circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[24] While the stabbing was preceded by a brief argument between appellant and Sayson, it cannot be gainsaid that the attack was indeed sudden and unexpected. Moreover, the fact that appellant went around the store in order to catch up with Sayson showed his tenacity to execute the crime.

In line with recent jurisprudence, we find the award of civil indemnity in the amount of ₱50,000.00 for the death of Sayson correct and proper without any need of proof other than the commission of the crime. We increase the award of moral damages to ₱50,000.00 in accordance with our ruling in *People v. Sison*.[25] The award of exemplary damages of ₱25,000.00 is likewise warranted because of the presence of the aggravating circumstance of treachery. Exemplary damages are awarded when the commission of the offense is attended by an aggravating

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[23] *Rollo*, pp. 9-10.

[24] *People v. Gutierrez*, 426 Phil. 752, 767 (2002).

[25] G.R. No. 172752, 18 June 2008.

circumstance, whether ordinary or qualifying.[26] Although the prosecution presented evidence that the heirs had incurred expenses, no receipts were presented. The award of temperate damages, in the amount of ₱25,000.00, to the heirs of the victim is justified. Temperate damages are awarded where no documentary evidence of actual damages was presented in the trial because it is reasonable to presume that, when death occurs, the family of the victim incurred expenses for the wake and funeral.

However, we delete the award of ₱40,000.00 in actual damages and ₱150,000.00 for loss of income granted by the trial court for it cannot simply rely on speculation, conjecture or guesswork as to the fact and amount of damages, but is required to depend upon competent proof that the claimant had suffered and on evidence of the actual amount thereof.[27]

WHEREFORE, the appealed judgment is *AFFIRMED WITH MODIFICATION*. Appellant Jose Balinas, Jr. is found *GUILTY* beyond reasonable doubt of murder qualified by treachery and sentenced to suffer *reclusion perpetua*.

Appellant is ordered to pay the heirs of Columban Sayson the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages**,** and ₱25,000.00 as exemplary damages**.**

SO ORDERED.

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

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[26] *People v. Segobre*, G.R. No. 169877, 14 February 2008.

[27] *Villafuerte v. Court of Appeals*, G.R. No. 134239, 26 May 2005, 489 SCRA 58.

THIRD DIVISION

[G.R. No. 182548. September 30, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESARIO OSIANAS, PABLITO LARIOSA, JOSE VILLARIN, MARIO PALABRICA, and VICENTE CUMAWAS,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; DEFINED. — While accused-appellants are correct that there was no direct evidence that they killed the victims, circumstantial evidence can always be resorted to. Hence, we have consistently held that: Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. **The prosecution is not always tasked to present direct evidence to sustain a judgment of conviction; the absence of direct evidence does not necessarily absolve an accused from any criminal liability.** Even in the absence of direct evidence, conviction can be had on the basis of circumstantial evidence, provided that the established circumstances constitute an unbroken chain which leads one to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, *i.e.*, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty. Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.

2. ID.; ID.; ID.; REQUISITES. — Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with: (1) there is more than one circumstance; (2) the facts from where the inferences are derived are proven; and (3) the

combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

3. ID.; ID.; ID.; ID.; CASE AT BAR FOUR-SQUARE WITH *PEOPLE V. BIONAT.* — A review of what has been and has not been in the case at bar reminds us of *People v. Bionat*. In said case, the Court held that the following proven facts constitute circumstantial evidence sufficient to prove the guilt of the accused therein beyond reasonable doubt: 1. Accused was positively identified by both Myrna and Joseph Romay, the wife and son of the victim, as one of the five armed men who called on their home and invited her husband to come down as their commander was waiting for him downstairs. 2. Her husband was tied-up upon going downstairs. 3. Accused was pinpointed by Myrna Romay as the one who pointed a gun at her and told her to go upstairs and not cry or shout or else her family would be killed as his other companions searched the house for guns prior to taking her husband away. 4. The five men, one of whom was the accused, brought the victim out of the house. That was the last time Myrna and her family saw the victim alive. 5. Ernesto Romay was found dead the next day, 50 meters from the road and 20 meters from his house, bearing stab wounds on different part of his body. In the case at bar, accused-appellants were identified by Teresita as the persons with various firearms and weapons who tied the victims and took the victims away, allegedly to ask them questions. Accused-appellants were seen by yet another witness, Dionisio Palmero, walking with the victims, who were still hog-tied, on the night prior to the discovery of their dead bodies. Finally, the victims were found dead the following day, still hog-tied.

4. ID.; ID.; PHYSICAL EVIDENCE; IDENTIFICATION; CONSTRUED; CASE AT BAR. — This Court has held that once a person has gained familiarity with another, identification becomes quite an easy task. This Court has also ruled that identification by the sound of a person's voice, as well as the physical build of such person, is a sufficient and acceptable means of identification, when it is established that the witness and the accused had known each other personally and closely for a number of years. In the case at bar, witnesses Teresita and Dionisio had known the accused-appellants since childhood. Identifying them, even considering the relative darkness of the

place, would have surely been effortless on their part. Neither do we see any ill motive on the part of these witnesses which could have caused them to testify falsely against accused-appellants. As regards Teresita, moreover, it would also be unnatural for her, being interested in vindicating the crime against her father, brother and uncle, to prosecute persons other than the real culprits.

5. ID.; ID.; ALIBI; INHERENT WEAKNESS IN THE FACE OF POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR. — Accused-appellants' defense of alibi is furthermore unconvincing. Alibi is the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony. Aside from the inherent weakness of alibi in the face of positive identification of the accused, the lack of corroboration and inconsistency in the defense witnesses' statements buries the version of the defense even more. Accused-appellant Osianas did not present any member of his family to confirm his presence in his house at the time of the incident. Accused-appellant Vicente Cumawas's testimony that he and co-accused-appellants Mario Palabrica, Jose Villarin and Pablito Lariosa were threshing *palay* on 20 October 1989 is self-serving and deserves no probative value. No corroborative evidence was presented to back up Cumawas's statements. There is also the glaring inconsistency between the testimonies of Rogelio Dince and accused-appellant Osianas. Osianas claims that he was at home sleeping in the evening of 20 October 1989. Rogelio Dince, on the other hand, testified that in that same evening, accused-appellant Osianas was at his (Rogelio's) house and left only at dawn.

6. ID.; ID.; ID.; REQUIREMENT FOR VALIDITY FOR PURPOSES OF EXONERATION FROM A CRIMINAL CHARGE; CASE AT BAR. — Besides, the above testimonies do not even show that it was physically impossible for the accused-appellants to have been at the scene of the crime at the time when it occurred. As held by the trial court, accused-appellants Osianas and Cumawas declared they were in a place situated within the *barangay* where the incident took place. Accused-appellant Osianas claims to have been asleep, while accused-appellant Cumawas claims to have been threshing *palay* with the other accused-appellants at the time of the incident. To be valid for purposes of exoneration from a criminal charge,

the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.

7. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, WHEN SUSTAINED BY THE COURT OF APPEALS, UPHELD BY THE SUPREME COURT. — It is well-entrenched that the findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses. In this case, there was no cogent reason to deviate from the findings of both lower courts.

8. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; CASE AT BAR. —Treachery is defined in Article 14, No. 16 of the Revised Penal Code: There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. We agree with the trial court. While we are aware of doctrinal pronouncements of this Court that the manner of attack must be proven in order to appreciate treachery, such is only applicable when it is the suddenness and the unexpectedness of the attack which were considered as the means used by the assailant to insure its execution, without risk to assailant arising from the defense which the offended party might make. In the case at bar, the means used by the accused-appellants to insure the execution

of the killing of the victims so as to afford the victims no opportunity to defend themselves was the act of tying the hands of the victims. Teresita saw the accused-appellants hog-tie the victims and take them away with them. Later that night, Dionisio Palmero saw the victims, still hog-tied, walking with the accused-appellants. The following day, the victims were found dead, still hog-tied. Thus, no matter how the stab and hack wounds had been inflicted on the victims in the case at bar, we are sure beyond a reasonable doubt that Jose, Ronilo and Reymundo Cuizon had no opportunity to defend themselves because the accused-appellants had earlier tied their hands. The fact that there were twelve persons who took and killed the Cuizons further assured the attainment of accused-appellants' plans without risk to themselves.

9. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; CASE AT BAR. — The following elements must be established in order that evident premeditation may be appreciated: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt. In this case at bar, the record is bereft of any evidence to show evident premeditation. It was not shown that the accused-appellants meditated and reflected upon their decision to kill the victim. We have held that the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill.

10. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ABSORBED IN TREACHERY. — As regards the qualifying circumstance of abuse of superior strength, this Court has held that such is already absorbed in treachery, and therefore cannot be separately considered.

11. ID.; CONSPIRACY; WHEN IT EXISTS; CASE AT BAR. — Conspiracy exists when two or more persons come to an

agreement concerning the commission of a felony and decide to commit it. The agreement may be deduced from the manner in which the offense was committed; or from the acts of the accused before, during and after the commission of the crime indubitably pointing to and indicating a joint purpose, a concert of action and a community of interest. It is not essential that there be proof of the previous agreement to commit the crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose. As found by the trial court, the facts of the case at bar clearly show that the accused-appellants conspired in the commission of the crime. Their gathering together at the house of Teresita, armed with different kinds of weapons; the tying of the victims by some of the accused in the presence of the others; and their leaving the place together, bringing with them the victims, clearly show the agreement among the accused-appellants to commit the crime.

12. ID.; CIVIL LIABILITY; DEATH DUE TO CRIME; WHAT MAY BE RECOVERED. — When death occurs due to a crime, the following damages may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.

13. ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIMS WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME; CASE AT BAR. — Civil indemnity is mandatory and granted to the heirs of the victims without need of proof other than the commission of the crime. We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of each of the victims as civil indemnity is proper.

14. CIVIL LAW; DAMAGES MORAL DAMAGES; AWARD THEREOF MANDATORY IN CASES OF MURDER AND HOMICIDE. — Moral damages are also mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award by the Court of Appeals of ₱50,000.00 is therefore proper.

15. ID.; ID.; TEMPERATE DAMAGES; WHEN AWARD THEREOF IN HOMICIDE OR MURDER CASES IS PROPER. — The

award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, because the heirs of the victims suffered pecuniary loss although the exact amount was not proved. Thus, this Court awards ₱25,000.00 as temperate damages to the heirs of the deceased victims. As to actual damages, the heirs of the victims are not entitled thereto, because said damages were not duly proved with reasonable degree of certainty.

16. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED WHEN CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTACES; CASE AT BAR. — Similarly, the heirs of the victims are not entitled to exemplary damages. Exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. In the instant case, treachery may no longer be considered as an aggravating circumstance since it was already taken as a qualifying circumstance in the murder.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is an appeal by Notice of Appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 00511 dated 13 November 2007 affirming with modification the Decision of the Regional Trial Court (RTC) of Kabankalan, Negros Occidental, in Criminal Cases No. 727, No. 727-A and No. 727-B finding herein accused-appellants guilty beyond reasonable doubt of the crime of murder.

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[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring; *Rollo*, pp. 5-22.

INFORMATIONS

On 14 February 1998, three Informations for murder were filed, to wit:

CRIMINAL CASE NO. 727

The undersigned Provincial Prosecutor accuses CESARIO OSIANAS *y* LAREDO *alias* "EGOY", RODRIGO CUMAWAS *y* CASTILLO *alias* "DIGO", VICENTE CUMAWAS *y* CASTILLO *alias* "ENTENG", JULIETO CUMAWAS *y* CASTILLO *alias* "JUDY", FORTUNATO CUMAWAS *y* CASTILLO *alias* "BUGOY", MARIO PALABRICA *y* BULOY, VICTOR CANOY *y* LUMACANG, JOSE VILLARIN *y* MANILINGAN *alias* "OWA", PATRICIO BAYSON *y* FABRICANTE *alias* "PAT", PABLITO LARIOSA *y* YUNTING alias "PABLING", ROSALIO BULADO *y* LARIOSA *alias* "MEMI" and DIOSDADO LARIOSA *y* BULADO *alias* "KOING" of the crime of Murder, committed as follows:

That on or about the 20th day of October, 1989, in the Municipality of Hinoba-an, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with assorted firearms of unknown calibers and bladed weapons, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, taking advantage of their superior strength, and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one RONILO CUIZON *y* MAHUSAY, thereby inflicting multiple injuries upon the body of the latter, which caused the death of said victim.

CRIMINAL CASE NO. 727-A

The undersigned Provincial Prosecutor accuses CESARIO OSIANAS *y* LAREDO *alias* "EGOY", RODRIGO CUMAWAS *y* CASTILLO *alias* "DIGO", VICENTE CUMAWAS *y* CASTILLO *alias* "ENTENG", JULIETO CUMAWAS *y* CASTILLO *alias* "JUDY", FORTUNATO CUMAWAS *y* CASTILLO *alias* "BUGOY", MARIO PALABRICA *y* BULOY, VICTOR CANOY *y* LUMACANG, JOSE VILLARIN *y* MANILINGAN *alias* "OWA", PATRICIO BAYSON *y* FABRICANTE *alias* "PAT", PABLITO LARIOSA *y* YUNTING *alias* "PABLING", ROSALIO BULADO *y* LARIOSA *alias* "MEMI" and DIOSDADO LARIOSA *y* BULADO *alias* "KOING" of the crime of Murder, committed as follows:

That on or about the 20th day of October, 1989, in the Municipality of Hinoba-an, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with assorted firearms of unknown calibers and bladed weapons, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, taking advantage of their superior strength, and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one REYMUNDO CUIZON *y* MAHUSAY, thereby inflicting multiple injuries upon the body of the latter, which caused the death of said victim.

CRIMINAL CASE NO. 727-B

The undersigned Provincial Prosecutor accuses CESARIO OSIANAS *y* LAREDO *alias* "EGOY", RODRIGO CUMAWAS *y* CASTILLO *alias* "DIGO", VICENTE CUMAWAS *y* CASTILLO *alias* "ENTENG", JULIETO CUMAWAS *y* CASTILLO *alias* "JUDY", FORTUNATO CUMAWAS *y* CASTILLO *alias* "BUGOY", MARIO PALABRICA *y* BULOY, VICTOR CANOY *y* LUMACANG, JOSE VILLARIN *y* MANILINGAN *alias* "OWA", PATRICIO BAYSON *y* FABRICANTE *alias* "PAT", PABLITO LARIOSA *y* YUNTING *alias* "PABLING", ROSALIO BULADO *y* LARIOSA *alias* "MEMI" and DIOSDADO LARIOSA y BULADO *alias* "KOING" of the crime of Murder, committed as follows:

That on or about the 20th day of October, 1989, in the Municipality of Hinoba-an, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with assorted firearms of unknown calibers and bladed weapons, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, taking advantage of their superior strength, and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one JOSE CUIZON *y* MAHUSAY, thereby inflicting multiple injuries upon the body of the latter, which caused the death of said victim.[2]

On 8 November 1990, accused Vicente Cumawas, Julieto Cumawas, Mario Palabrica, Victor Canoy, Patricio Bayson and Rosalio Bulado pleaded not guilty. On 10 December 1990, accused Cesario Osianas, Fortunato Cumawas, Jose Villarin, Pablito Lariosa and Diosdado Lariosa also pleaded not guilty. Finally,

[2] *Rollo,* pp. 6-8.

on 15 January 1991, accused Rodrigo Cumawas likewise pleaded not guilty.

On 11 June 1991, the Assistant Provincial Prosecutor filed a Motion to Dismiss the Information against Rosalio Bulado on the ground that said accused died on 23 May 1991.

On 30 April 1993, Rodrigo Cumawas, Julieto Cumawas, Victor Canoy, Patricio Bayson and Diosdado Lariosa withdrew their plea of not guilty and entered a plea of guilty. They were sentenced to suffer an indeterminate penalty of six years, one month and ten days *of prision correccional* as minimum to twelve years, five months and ten days of *reclusion temporal* as maximum. Trial against the remaining accused ensued.

On 25 May 1994, the trial court dismissed the case against Fortunato Cumawas who died on 16 August 1991.

PROSECUTION'S VERSION OF THE FACTS

On 20 October 1989, at around 6:00 p.m., in Sitio Calapayan, Barangay San Rafael, Hinoba-an, Negros Occidental, Jose Cuizon, his son Ronilo Cuizon, and his brother Raymundo Cuizon were sleeping in the house of Jose's daughter, Teresita Cuizon-Cuerpo, who was also asleep with her two children. Suddenly, there was a loud knocking on the door and shouts calling for Jose to rise and come out. When asked, the persons knocking at the door said they were members of the New People's Army (NPA) and that they will burn the house down if the door was not opened. Jose opened the door. Teresita then saw accused-appellants, together with the other seven accused who were all armed with improvised shotguns, short firearms, knives, and double-bladed weapons. They barged in, hog-tied the hands of Jose, Ronilo and Raymundo and brought them out of the house allegedly for questioning.

In the meantime, Dionisio Palmero was in his house. He was alarmed by the incessant barking of dogs. When he looked out of the window, he saw Jose, Ronilo and Raymundo, with their hands bound behind their backs, in the company of twelve persons, among whom were the accused-appellants.

At around 2:00 p.m. of the next day, 21 October 1989, the dead bodies of Jose, Ronilo and Raymundo were found in Sitio Sangke, Talacagay, around two kilometers away from Barangay Hinoba-an. Ronilo's body lay face down on the ground covered with leaves, with his hands still tied with rope. Jose's corpse lay on its back with the hands still tied behind the body with a belt. Raymundo was found near the river with his hands also tied, with a piece of red cloth.

DEFENSE'S VERSION OF THE FACTS

Accused-appellant Cesario Osianas testified that at 10:00 p.m. on the night of the incident, 20 October 1989, he was asleep inside his house in Sitio Tayoman with his wife and children. Being exhausted from work, he did not know what happened to the Cuizons whom he knew, for his house was within the same *barangay* as theirs. He was suspected of involvement in the commission of the crime, because Ronilo Cuizon had killed his son sometime in 1984.[3]

Rogelio Dince testified that Cesario Osianas was in his (Rogelio's) house at around 9:00 p.m. on 20 October 1989, and left only when the latter's wife called him at daybreak.[4]

Accused-appellant Vicente Cumawas testified that on 18 October 1989, he was harvesting *palay* owned by a certain Gerry with co-accused-appellants Mario Palabrica, Jose Villarin and Pablito Lariosa. They threshed the *palay* on 20 October 1989 and had no chance to leave their work from 8:00 a.m. of that day until dawn of 21 October 1989.

RULINGS BY THE RTC AND THE COURT OF APPEALS

On 26 October 1995, the trial court convicted the herein accused-appellants, Cesario Osianas, Pablito Lariosa, Joel Villarin, Mario Palabrica and Vicente Cumawas of the crime of murder, to wit:

WHEREFORE, the accused CESARIO OSIANAS, PABLITO LARIOSA, JOEL VILLARIN, MARIO PALABRICA and VICENTE

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[3] TSN, 6 December 1994, pp. 4-6.

[4] TSN, 6 July 1995, pp. 6-7.

CUMAWAS are found guilty beyond reasonable doubt of the crime of murder and are each sentenced to suffer the penalty of *RECLUSION PERPETUA* in Criminal Case No. 727, *RECLUSION PERPETUA* in Criminal Case No. 727-A, and *RECLUSION PERPETUA* in Criminal Case No. 727-B; to indemnify the heirs of the victims in each case the sum of Fifty Thousand (₱50,000.00) Pesos without subsidiary imprisonment in case of insolvency and to pay the costs of this suit.[5]

The accused-appellants appealed to this Court. On 13 September 2004, however, we transferred[6] the appeal to the Court of Appeals in conformity with our decision in *People v. Mateo*.[7] The appeal was docketed as CA-G.R. CR HC No. 00511.

On 13 November 2007, the Court of Appeals promulgated its Decision affirming the Decision of the RTC. The Court of Appeals disposed of the case as follows:

WHEREFORE, premises considered, the Decision dated October 26, 1995 of the Regional Trial Court ("RTC"), 6th Judicial Region, Branch 61, in Kabankalan, Negros Occidental, in Criminal Case Nos. 727, 727-A and 727-B, entitled "P*eople of the Philippines vs. Cesario Osianas y Laredo alias "Egoy", et. al.*, is AFFIRMED with modification in that appellants are ordered to pay the heirs of each of the victims the amount of ₱50,000.00 as moral damages.[8]

On 6 December 2007, accused-appellants filed a Notice of Appeal with the Court of Appeals.

THIS COURT'S RULING

Identification of the Assailants

Accused-appellants argue that since Teresita Cuerpo had not seen the killing of the victims, it was an error for the lower courts to rule that she had positively identified the accused-appellants as the perpetrators of the crime. Such conclusion,

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[5] CA *rollo*, p. 37.

[6] *Id.* at 209.

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

[8] *Rollo*, p. 21.

according to the accused-appellants, was based on surmises, speculations and conjectures.[9]

Accused-appellants likewise point out that Dionisio Palmero merely testified that he saw the victims passing with the accused-appellants near his (Dionisio's) house. He did not see the killing, either.

While accused-appellants are correct that there was no direct evidence that they killed the victims, circumstantial evidence can always be resorted to. Hence, we have consistently held that:

> Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. **The prosecution is not always tasked to present direct evidence to sustain a judgment of conviction; the absence of direct evidence does not necessarily absolve an accused from any criminal liability.** Even in the absence of direct evidence, conviction can be had on the basis of circumstantial evidence, provided that the established circumstances constitute an unbroken chain which leads one to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, *i.e.*, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[10] (Emphasis supplied.)

Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.[11] Section 4, Rule 133 of the Rules of

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[9] Appellants' Brief, CA *rollo*, p. 139.

[10] *People v. Gallarde*, 382 Phil. 718, 733 (2000), citing *People v. Lopez*, 371 Phil. 852, 859-860 (1999); *People v. Danao*, 323 Phil. 178, 184-185 (1996); *People v. Alvero, Jr.*, G.R. No. 72319, 30 June 1993, 224 SCRA 16, 27; *People v. Garcia*, G.R. No. 94187, 4 November 1992, 215 SCRA 349, 360; *People v. Tiozon*, G.R. No. 89823, 19 June 1991, 198 SCRA 368, 380.

[11] *People v. Pascual, Jr.*, 432 Phil. 224, 231 (2002), citing *People v. Mansueto*, 391 Phil. 611, 628-629 (2000); *People v. Fabon*, 384 Phil. 860, 875

Court provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with:

(1) there is more than one circumstance;

(2) the facts from where the inferences are derived are proven; and

(3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

A review of what has been and has not been proven in the case at bar reminds us of *People v. Bionat.*[12] In said case, the Court held that the following proven facts constitute circumstantial evidence sufficient to prove the guilt of the accused therein beyond reasonable doubt:

1. Accused was positively identified by both Myrna and Joseph Romay, the wife and son of the victim, as one of the five armed men who called on their home and invited her husband to come down as their commander was waiting for him downstairs.

2. Her husband was tied-up upon going downstairs.

3. Accused was pinpointed by Myrna Romay as the one who pointed a gun at her and told her to go upstairs and not cry or shout or else her family would be killed as his other companions searched the house for guns prior to taking her husband away.

4. The five men, one of whom was the accused, brought the victim out of the house. That was the last time Myrna and her family saw the victim alive.

5. Ernesto Romay was found dead the next day, 50 meters from the road and 20 meters from his house, bearing stab wounds on different part of his body.

In the case at bar, accused-appellants were identified by Teresita as the persons with various firearms and weapons who tied the victims and took the victims away, allegedly to ask them questions.

(2000); *People v. Rondero*, 378 Phil. 123, 137 (1999); *People v. Raganas*, 374 Phil. 810, 822 (1999); *People v. Caparas, Jr.*, 352 Phil. 686, 698 (1998).

[12] 343 Phil. 981 (1997).

Accused-appellants were seen by yet another witness, Dionisio Palmero, walking with the victims, who were still hog-tied, on the night prior to the discovery of their dead bodies.[13] Finally, the victims were found dead the following day, still hog-tied.

Accused-appellants, however, counter that the identification of the accused-appellants by Teresita and Dionisio was shaky. Accused-appellants underscore the portion of Teresita Cuerpo's testimony wherein she admitted that there was no electricity in their house at the time the victims were taken away. Accused-appellants quote Teresita's testimony, as follows:

Q: Am I correct to say that in your *barangay* there is no electricity?
A Not yet.

Q And you will agree with me that at 10:00 P.M. especially when you put up the light, it is dark?
A: Yes, sir.

x x x x x x x x x

Q And there was no light in your house during that time?
A No light, sir.

Q So how did you see that Ronillo wanted to jump through the window when there was no light in your house?
A Because only two of us were left.

Q But there was no light inside?
A There was no light.[14]

Accused-appellants also draw attention to Teresita's admission that she had not seen the accused-appellants clearly:

Q But actually, you had not seen them clearly?
A Yes, sir.[15]

Dionisio's testimony allegedly shows the same "defect":

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[13] TSN, 30 October 1991, p. 7.

[14] TSN, 14 August 1991, pp. 16-20.

[15] *Id*.

Q During that time, at 10:00 o'clock in the evening on October 20, 1989, is it not a fact that your house was already dark because you were preparing to sleep?
A Yes, sir.

Q And there was electric light around Sangke?
A No, sir.

Q And the street along the way from your house to the house of Teresita Cuerpo was not lighted with lamp?
A No, sir.

Q And it is very dark during that evening?
A At that time the moon was on its rising position and its light reflected on those persons.

Q And you will agree with me that during the rising of the moon, its light was not so bright?
A Yes, sir.[16]

According to accused-appellants, all these admissions create reasonable doubt as to the identification of the accused-appellants.

We are not convinced. As found by the trial court, Teresita was familiar not only with the appearances, but also with the voices of the accused-appellants, since she had known them and was familiar with them since her childhood days. Teresita maintained this fact even through her cross-examination, when she testified:

Q You said that you all know the accused from your childhood up to the time of the incident, is that correct?
A Yes, sir.

Q And you often see them in that place?
A Yes, sir.

Q And you also conversed with him?
A Yes, sir.

Q And they also visit your house?
A Yes, sir.

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[16] TSN, 30 October 1991, pp. 19-20.

Q In other words, you know them for quite a time and you can recognize their voice?
A Yes, sir.

Q Now, when private prosecutor asked you to identify each accused, you were able to identify them because you know them from the past?
A Yes, sir.

Q Now, when you were able to hear the voice in the evening of October 20, 1989 calling for your father "*Tay, bangon*", were you able to recognize the voice?
A Yes, sir. Vicente Cumawas.

x x x x x x x x x

Q In other words, when there's no light, you could not identify who were you talking to because it is dark?
A From their voice and the way they appear and their figures I can identify them already.[17]

The same is true as regards Dionisio's testimony. Dionisio thus testified in the following manner when asked during cross-examination:

ATTY. DITCHING —

Q By the way, Mr. Palmero, you said you have known these persons mentioned a while ago — for how long have you known these persons?

WITNESS —

A I have known these persons since our childhood days because we were neighbors.

ATTY. DITCHING —

Q And because of that you can definitely be sure that you know them?
A Yes, sir.[18]

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[17] TSN, 14 August 1991, pp. 17-20.

[18] TSN, 30 October 1991, pp. 23-24.

This Court has held that once a person has gained familiarity with another, identification becomes quite an easy task.[19] This Court has also ruled that identification by the sound of a person's voice,[20] as well as the physical build of such person,[21] is a sufficient and acceptable means of identification, when it is established that the witness and the accused had known each other personally and closely for a number of years.

In the case at bar, witnesses Teresita and Dionisio had known the accused-appellants since childhood. Identifying them, even considering the relative darkness of the place, would have surely been effortless on their part. Neither do we see any ill motive on the part of these witnesses which could have caused them to testify falsely against accused-appellants. As regards Teresita, moreover, it would also be unnatural for her, being interested in vindicating the crime against her father, brother and uncle, to prosecute persons other than the real culprits.[22]

Accused-appellants' defense of alibi is furthermore unconvincing. Alibi is the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony. Aside from the inherent weakness of alibi in the face of positive identification of the accused, the lack of corroboration and inconsistency in the defense witnesses' statements buries the version of the defense even more. Accused-appellant Osianas did not present any member of his family to confirm his presence in his house at the time of the incident. Accused-appellant Vicente Cumawas's testimony that he and co-accused-appellants Mario Palabrica, Jose Villarin and Pablito Lariosa were threshing *palay* on 20 October 1989 is self-serving and deserves no probative value. No corroborative evidence was presented to back up Cumawas's

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[19] *People v. Cañete*, 448 Phil. 127, 142 (2003); *People v. Delgaco*, 351 Phil. 451, 463 (1998); *People v. Castillo*, 330 Phil. 205, 213-214 (1996).

[20] *People v. Prieto*, 454 Phil. 389, 401 (2003); *People v. Reynaldo*, 353 Phil. 883, 893 (1998).

[21] *People v. Cañete*, *supra* note 19.

[22] *People v. Viente*, G.R. No. 103299, 17 August, 1993, 225 SCRA 361, 368-369.

statements. There is also the glaring inconsistency between the testimonies of Rogelio Dince and accused-appellant Osianas. Osianas claims that he was at home sleeping in the evening of 20 October 1989. Rogelio Dince, on the other hand, testified that in that same evening, accused-appellant Osianas was at his (Rogelio's) house and left only at dawn.

Besides, the above testimonies do not even show that it was physically impossible for the accused-appellants to have been at the scene of the crime at the time when it occurred. As held by the trial court, accused-appellants Osianas and Cumawas declared they were in a place situated within the *barangay* where the incident took place. Accused-appellant Osianas claims to have been asleep, while accused-appellant Cumawas claims to have been threshing *palay* with the other accused-appellants at the time of the incident. To be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[23]

It is well-entrenched that the findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[24] The rule finds an even more stringent application where the said findings are sustained by the Court

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[23] *People v. Bracamonte*, 327 Phil. 160, 162 (1996).

[24] *People v. Benito*, 363 Phil. 90, 97-98 (1999).

of Appeals.[25] Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[26] In this case, there was no cogent reason to deviate from the findings of both lower courts.

Qualifying Circumstances

The circumstances alleged in the Informations to qualify the killing to murder are evident premeditation, treachery, and taking advantage of their superior strength. The only qualifying circumstance discussed by the trial court is that of treachery:

> There is no question that the victims' bodies, when found, had still their hands tied, with Reymundo Cuizon having three (3) wounds and a hematoma at the right side of his body (Exhibits "A" to "A-3"); with five (5) stab and hack wounds on Ronilo Cuizon (Exhibits "B" to "B-3"), and four (4) stab wounds on Jose Cuizon (Exhibits "C" to "C-5").
>
> This situation of the victims when found shows without doubt that they were killed when they were tied, so that, the qualifying aggravating circumstance of treachery was present.[27]

Treachery is defined in Article 14, No. 16 of the Revised Penal Code:

> There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

We agree with the trial court. While we are aware of doctrinal pronouncements of this Court that the manner of attack must be proven in order to appreciate treachery,[28] such is only applicable

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[25] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[26] *People v. Benito*, 363 Phil. 90, 97-98 (1999).

[27] , . 37.

[28] *People v. Samudio*, 406 Phil. 318, 329 (2001).

when it is the suddenness and the unexpectedness of the attack which were considered as the means used by the assailant to insure its execution, without risk to assailant arising from the defense which the offended party might make. In the case at bar, the means used by the accused-appellants to insure the execution of the killing of the victims so as to afford the victims no opportunity to defend themselves was the act of tying the hands of the victims. Teresita saw the accused-appellants hog-tie the victims and take them away with them. Later that night, Dionisio Palmero saw the victims, still hog-tied, walking with the accused-appellants. The following day, the victims were found dead, still hog-tied. Thus, no matter how the stab and hack wounds had been inflicted on the victims in the case at bar, we are sure beyond a reasonable doubt that Jose, Ronilo and Reymundo Cuizon had no opportunity to defend themselves because the accused-appellants had earlier tied their hands. The fact that there were twelve persons who took and killed the Cuizons further assured the attainment of accused-appellants' plans without risk to themselves.

The other qualifying circumstances alleged in the Information, evident premeditation and abuse of superior strength, cannot be appreciated in the case at bar.

The following elements must be established in order that evident premeditation may be appreciated: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[29] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[30] Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable

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[29] *People v. PO3 Tan*, 411 Phil. 813, 836-837 (2001).

[30] *People v. Rivera*, 458 Phil. 856, 879 (2003).

doubt.[31] In this case at bar, the record is bereft of any evidence to show evident premeditation. It was not shown that the accused-appellants meditated and reflected upon their decision to kill the victim. We have held that the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill.[32]

As regards the qualifying circumstance of abuse of superior strength, this Court has held that such is already absorbed in treachery,[33] and therefore cannot be separately considered.

Conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[34] The agreement may be deduced from the manner in which the offense was committed; or from the acts of the accused before, during and after the commission of the crime indubitably pointing to and indicating a joint purpose, a concert of action and a community of interest. It is not essential that there be proof of the previous agreement to commit the crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose.[35]

As found by the trial court, the facts of the case at bar clearly show that the accused-appellants conspired in the commission of the crime. Their gathering together at the house of Teresita, armed with different kinds of weapons; the tying of the victims by some of the accused in the presence of the others; and their leaving the place together, bringing with them the victims, clearly

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[31] *People v. Manes*, 362 Phil. 569, 579 (1999).

[32] *People v. Tan*, 373 Phil. 190, 200 (1999); *People v. Mahinay*, 364 Phil. 423, 436 (1999); *People v. Chua*, 357 Phil. 907, 921 (1998).

[33] *People v. Villanueva*, G.R. No. 98468, 17 August 1993, 225 SCRA 353, 360; *People v. Borja*, 180 Phil. 280 (1979); *People v. Pasilan*, 122 Phil. 46 (1965); *People v. Escalona*, 111 Phil. 502 (1961).

[34] Revised Penal Code, Article 8.

[35] *People v. Fuertes*, 383 Phil. 277, 307 (2000).

show the agreement among the accused-appellants to commit the crime.

Conspiracy having been established in the case at bar, the act of one is considered the act of all, and all accused-appellants should therefore be held guilty of three counts of murder.

Civil Liability

When death occurs due to a crime, the following damages may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[36]

Civil indemnity is mandatory and granted to the heirs of the victims without need of proof other than the commission of the crime.[37] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence,[38] the award of ₱50,000.00 to the heirs of each of the victims as civil indemnity is proper.

Moral damages are also mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[39] The award by the Court of Appeals of ₱50,000.00 is therefore proper.

As to actual damages, the heirs of the victims are not entitled thereto, because said damages were not duly proved with reasonable degree of certainty.[40] Similarly, the heirs of the victims

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[36] *Nueva España v. People*, G.R. No. 163351, June 21, 2005, 547 SCRA 555.

[37] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[38] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400; *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133, 141.

[39] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[40] *People v. Tubongbanua*, *supra* note 37.

are not entitled to exemplary damages. Exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances.[41] In the instant case, treachery may no longer be considered as an aggravating circumstance since it was already taken as a qualifying circumstance in the murder.

The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[42] Under Article 2224 of the Civil Code, temperate damages may be recovered, because the heirs of the victims suffered pecuniary loss although the exact amount was not proved.[43] Thus, this Court awards ₱25,000.00 as temperate damages to the heirs of the deceased victims.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR HC No. 00511 dated 13 November 2007, which affirmed with modification the Decision of the Regional Trial Court of Kabankalan, Negros Occidental, in Criminal Cases No. 727, No. 727-A and No. 727-B, is hereby *AFFIRMED*, with the *MODIFICATION* that accused-appellants are further ordered to pay the heirs of each of the victims the amount of ₱25,000.00 as temperate damages. No costs.

SO ORDERED.

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

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[41] Civil Code, Article 2230.

[42] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

[43] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

EN BANC

[A.M. No. MTJ-03-1499. October 6, 2008]
(Formerly A.M. OCA IPI No. 02-1310-MTJ)

CELFRED P. FLORES, *petitioner, vs.* **JUDGE RODOLFO B. GARCIA,** *respondent.*

[A.M. No. P-03-1752. October 6, 2008]
(Formerly A.M. OCA IPI No. 03-1595-P)

JUDGE RODOLFO B. GARCIA, *petitioner, vs.* **CELFRED P. FLORES, UTILITY WORKER, MUNICIPAL CIRCUIT TRIAL COURT, CALATRAVA, NEGROS OCCIDENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; RECONCILIATION OF PARTIES DOES NOT STRIP THE COURT OF ITS JURISDICTION TO HEAR THE ADMINISTRATIVE CASE; RATIONALE. — The subsequent reconciliation of the parties to an administrative proceeding does not strip the court of its jurisdiction to hear the administrative case until its resolution. Atonement, in administrative cases, merely obliterates the personal injury of the parties and does not extend to erase the offense that may have been committed against the public service. As succinctly put by the Memorandum of the Office of the Court Administrator: x x x [T]he withdrawal of an administrative complaint or subsequent desistance by the complainant does not free the respondent from liability as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office i[s] a public trust. The withdrawal of the complaint or the execution of an affidavit of desistance does not automatically result in the dismissal of the administrative case. It will not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint. Thus, the joint manifestation filed by the parties praying that the charges and counter-charges be dismissed should be denied. x x x To condition administrative

actions upon the will of every complainant who may, for one reason or another, condone a detestable act is to strip the Court of its supervisory power to discipline erring members of the judiciary. Disciplinary proceedings of this nature involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for public welfare, *i.e.*[,] to maintain the faith and confidence of the people in the government and its agencies and instrumentalities.

2. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; THE CODE OF JUDICIAL ETHICS DICTATES THAT A JUDGE IN ORDER TO PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY MUST BEHAVE WITH PROPRIETY AT ALL TIMES. — Judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon which he must pay for accepting and occupying an exalted position in the administration of justice. His personal behavior, not only upon the bench but also in everyday life, should be above reproach and free from the appearance of impropriety. The Code of Judicial Ethics dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. He should personify judicial integrity and exemplify honest public service. Thus, when Judge Garcia acted without exercising civility, self-restraint, prudence and sobriety even — if at all — he was indeed provoked, he did so in violation of Canon 4 of the New Code of Judicial Conduct.

3. ID.; CODE OF JUDICIAL CONDUCT; ENUMERATION OF SERIOUS CHARGES THEREUNDER. — An act that violates the Code of Judicial Conduct constitutes gross misconduct which is considered a serious charge under Section 8(3) of Rule 140 of the Rules of Court, *viz.*: SEC. 8. Serious charges. — Serious charges include: 1. Bribery, direct or indirect; 2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019); 3. **Gross misconduct constituting violations of the Code of Judicial Conduct;** 4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

5. Conviction of a crime involving moral turpitude; 6. Willful failure to pay a just debt; 7. Borrowing money or property from lawyers and litigants in a case pending before the court; 8. Immorality; 9. Gross ignorance of the law or procedure; 10. Partisan political activities; and 11. Alcoholism and/or vicious habits.

4. ID.; ID.; ID.; PENALTIES. — Under Section 11 of the same Rule, a serious charge metes out either of the following penalties, *viz.*: SEC. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1.Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

5. ID.; ID.; GROSS MISCONDUCT; IMPOSABLE PENALTY. — Retired Judge Rodolfo B. Garcia of the Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental is found **GUILTY** of gross misconduct constituting a violation of the Code of Judicial Conduct under Section 8(3) of Rule 140 of the Rules of Court. The Court hereby imposes upon Judge Garcia a **FINE** of Twenty Thousand Five Hundred Pesos (₱20,500.00) to be deducted from the amount of ₱80,000.00 which was previously withheld by the Court from his retirement benefits pursuant to the Court's Resolution dated 8 June 2004 in A.M. OCA IPI No. 03-1403-MTJ. The administrative charge for falsification filed against Celfred P. Flores, also of the same court, is **DISMISSED** for lack of merit.

D E C I S I O N

PUNO, *C.J.*:

The case at bar consolidates two administrative cases filed by Judge Rodolfo B. Garcia and Utility Worker Celfred P. Flores,

both of the Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental, against each other.

The first case, Administrative Matter No. MTJ-03-1499, is a verified Letter-Complaint[1] filed on 30 September 2002 by Flores against Judge Garcia for oppression, grave misconduct, and violations of the Code of Judicial Conduct and the Code of Judicial Ethics. The second case, Administrative Matter No. P-03-1752, is a counter-charge for falsification[2] filed by Judge Garcia against Flores on 12 March 2003.

Flores complained of two incidents in the first case. The first incident took place in the afternoon of 22 July 2002 in front of the Rizal Commercial Banking Corporation (RCBC) in San Carlos City, Negros Occidental. Flores alleged that Judge Garcia boxed and hit him on the face and threatened to shoot him. The second incident took place on 24 July 2002 inside the courtroom of Judge Garcia. Respondent judge allegedly pointed a finger at Flores, ordered him to get out of the courtroom and hit him at the back part of his head as he was about to leave the courtroom in the presence of court personnel and litigants. Flores also alleged that Judge Garcia shouted saying that the latter could have shot him had he brought his revolver with him that day.

Flores attached to his Letter-Complaint the affidavits of Reynaldo A. Abunda, Jr., a security guard of RCBC, and Reynaldo Barren, Clerk of Court of the Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental. Abunda corroborated the statements of Flores regarding the incident of 22 July 2002[3] while Barren corroborated the claims of Flores on the incident of 24 July 2002. Flores also attached the Extract Police Report[4] dated 31 July 2002 from the Police Blotter of the San Carlos City Police Station which recorded the physical injuries he sustained on 22 July 2002. He likewise attached the Extract

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[1] *Rollo* I, 5.

[2] Dated 26 January 2003; *Rollo* II, 3.

[3] *Rollo* II, 8.

[4] *Rollo* I, 14.

Copy of Police Blotter[5] from the Calatrava Municipal Police Station which recorded the 24 July 2002 incident.

In his Comment[6] dated 30 November 2002, Judge Garcia denied having boxed Flores. He alleged that he merely lifted his fist against Flores to express his anger over the latter's alleged immoral advances on his then already senile 78-year old wife. He averred that Flores filed the Letter-Complaint in order to cover up the latter's lewd designs on his wife and to preempt his filing of a falsification case. Judge Garcia also submitted an Affidavit of Retraction[7] of Abunda, one of Flores' witnesses, and assailed the credibility of Barren, Flores' other witness. Barren is allegedly a liar and a falsifier who, in the past, had misappropriated the court's fiduciary bank deposit "due to extreme necessity and several downfalls in life."[8] Barren was allegedly on Absence Without Leave and had not cleared his monetary liabilities despite several directives from the office. Judge Garcia also presented a Joint Affidavit[9] executed by five members of his staff stating that the allegation of Flores that Judge Garcia boxed him was false and exaggerated. Finally, Judge Garcia argued that Flores should have attached a medical certificate to prove that he was indeed injured or hurt by him.

On the counter-charge for falsification, Judge Garcia alleged that Flores falsified his Affidavit in his Letter-Complaint when he alleged that Judge Garcia boxed him in San Carlos City, Negros Occidental on 22 July 2002. Judge Garcia pointed out that the Daily Time Record[10] of Flores on 22 July 2002 showed that he was in the court from 12:40 p.m. to 5:30 p.m. of that day. Judge Garcia also accused Flores of falsifying the Affidavit of Abunda who later on executed an Affidavit of Retraction.

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[5] *Rollo* I, 15.

[6] *Rollo* I, 22-30.

[7] *Rollo* II, 9.

[8] *Rollo* I, 35-38.

[9] *Rollo* I, 31.

[10] *Rollo* II, 7.

Abunda allegedly signed the Affidavit without knowing that there was a statement to the effect that Judge Garcia boxed Flores.

Flores, in his Answer,[11] accused Judge Garcia of forum shopping since the latter had already filed a similar complaint[12] on 13 February 2003 against him before the Office of the Ombudsman for the Visayas. He further pointed out that Judge Garcia himself had admitted in his Comment that the first incident took place in the afternoon of 22 July 2002 near the LBC office in San Carlos City. Flores also downplayed Abunda's Affidavit of Retraction and stressed that the original Affidavit had been sworn to before the Assistant Provincial Prosecutor and thus enjoyed the presumption of regularity. With regard to the Joint Affidavit executed by five staff members from the same court, Flores questioned the truthfulness of their statements as they were then under the supervision of Judge Garcia. Lastly, Flores considered as hollow and disputable the issue on his failure to present a medical certificate to substantiate his claim of having suffered physical injuries.

The Court, in a Resolution[13] dated 20 October 2003, consolidated both cases and referred them to then Executive Judge Roberto S. Javellana of the Regional Trial Court of San Carlos City for investigation, report and recommendation. Judge Javellana, however, inhibited himself from hearing the cases upon the Motion for Inhibition[14] filed by Judge Garcia on the ground of impartiality. Thus, in another Resolution[15] of the Court dated 14 June 2004, the cases were referred to Executive Judge Pepito B. Gellada of the Regional Trial Court of Bacolod City who later requested the recall of his designation. On 22 August 2005, the Court issued another Resolution[16] referring the cases

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[11] *Rollo* II, 16-18.

[12] *Rollo* II, 19-20.

[13] *Rollo* II, 48.

[14] *Rollo* I, 97-100.

[15] *Rollo* II, 83.

[16] *Rollo* I, 245.

to Executive Judge Roberto S. Chiongson of the Regional Trial Court of Bacolod City.

Judge Chiongson, in his Report and Recommendation[17] dated 1 December 2005, recommended that both cases be dismissed. He found that the complaint for falsification against Flores was not well-founded. He stated that part of the job of Flores as a utility worker was to do official errands for Judge Garcia. Thus, if he was in San Carlos City on 22 July 2002 and indicated in his Daily Time Record that he had reported for work on the same day, such did not constitute falsification as he accompanied Judge Garcia on official business. With regard to the case filed against Judge Garcia, Judge Chiongson did not find the complaint to be serious as it did not involve graft and corruption. The investigating judge also recommended the dismissal of the case against Judge Garcia in view of the Affidavit of Retraction executed by Flores and the retirement of Judge Garcia from the service.

The Court, through its Second Division, noted the receipt of Judge Chiongson's Report and Recommendation in a Resolution[18] dated 5 April 2006 and referred the consolidated cases to the Office of the Court Administrator for evaluation, report and recommendation.

On 12 October 2006, the Office of the Court Administrator submitted the following recommendations in its Memorandum, *viz*.:

1. That Judge Rodolfo B. Garcia (Retired), Municipal Circuit Trial Court, Calatrava-Toboso, Negros Occidental, be found **GUILTY** of gross misconduct constituting violations of the Code of Judicial Conduct [Sec. 8(3), Rule 140 of the Rules of Court];

2. That Judge Garcia be **FINED** in the amount of [₱]20,500, the amount of which shall be taken from the [₱]80,000 withheld by the Court in its Resolution dated June 8, 2004 in A.M. OCA IPI No. 03-1403-MTJ; and[,]

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[17] *Rollo* II, 107-108.

[18] *Rollo* II, 113.

3. That the administrative case, docketed as A.M. No. P-03-1752, against Celfred P. Flores, Utility Worker, same court, for falsification of his daily time records (*sic*), be **DISMISSED**.[19]

On 23 July 2007, the Court required the parties to manifest if they are willing to submit the case for decision on the basis of the pleadings filed. The parties submitted a Joint Manifestation[20] on 11 October 2007 praying that the Court dismiss both cases and consider them closed and terminated in view of their subsequent reconciliation.

The Court issued a Resolution[21] on 28 November 2007 referring the Joint Manifestation to the Office of the Court Administrator for evaluation, report and recommendation. In a Memorandum dated 16 June 2008, the Office of the Court Administrator submitted the following recommendations, *viz.*:

1. the Joint Manifestation dated 11 October 2007 of Ret. Judge Rodolfo B. Garcia and Mr. Celfred P. Flores, filed in compliance with the Resolution dated 23 July 2007, praying for the dismissal of their respective cases against each other and/or for the Court to consider the same as closed and terminated, be **DENIED** for utter lack of merit; [and,]

2. the recommendations in our October 12, 2006 Memorandum be taken into consideration in resolving the instant consolidated cases.[22]

The subsequent reconciliation of the parties to an administrative proceeding does not strip the court of its jurisdiction to hear the administrative case until its resolution. Atonement, in administrative cases, merely obliterates the personal injury of the parties and does not extend to erase the offense that may have been committed against the public service. As succinctly put by the Memorandum of the Office of the Court Administrator:

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[19] Memorandum, 6; *Rollo* II, 119. *Emphases in the original.*

[20] *Rollo* II, 122-123.

[21] *Rollo* II, 129.

[22] Memorandum dated 16 June 2008, 3-4; *Rollo* II, 133-134. *Emphasis in the original.*

x x x [T]he withdrawal of an administrative complaint or subsequent desistance by the complainant does not free the respondent from liability as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office i[s] a public trust. The withdrawal of the complaint or the execution of an affidavit of desistance does not automatically result in the dismissal of the administrative case. It will not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint. Thus, the joint manifestation filed by the parties praying that the charges and counter-charges be dismissed should be denied. x x x To condition administrative actions upon the will of every complainant who may, for one reason or another, condone a detestable act is to strip the Court of its supervisory power to discipline erring members of the judiciary. Disciplinary proceedings of this nature involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for public welfare, *i.e.*[,] to maintain the faith and confidence of the people in the government and its agencies and instrumentalities.[23]

As gleaned from the Pre-Trial Order,[24] Judge Garcia admitted at the pre-trial conference to having confronted Flores on his alleged immoral advances on Mrs. Garcia. He admitted uttering the following to Flores: "Fred, you're only here, what are you doing here? If only I have a gun I will shoot you. It's better for you to elope." He also admitted pointing a finger at Flores as he ordered him to get out of the office and telling him in the presence of the court personnel: "If only I have brought with me my revolver, I should have shot him."

Judge Garcia had acted in wanton disregard of the exacting standards of conduct attached to his position as a magistrate. Judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon which he must pay for accepting and occupying an exalted position in the administration of justice.[25] His personal behavior, not only upon

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[23] Memorandum dated 12 October 2006, 4; *Rollo* II, 117. *Citations omitted.*

[24] *Rollo* I, 117-120.

[25] *Torcende v. Sardido,* A.M. No. MTJ-99-1238, 24 January 2003, 396 SCRA 11; *Rosales v. Villanueva,* A.M. No. RTJ-03-1784, 17 June 2003, 404 SCRA 98.

the bench but also in everyday life, should be above reproach and free from the appearance of impropriety. The Code of Judicial Ethics dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. He should personify judicial integrity and exemplify honest public service.[26] Thus, when Judge Garcia acted without exercising civility, self-restraint, prudence and sobriety even — if at all — he was indeed provoked, he did so in violation of Canon 4 of the New Code of Judicial Conduct, [27] *viz.*:

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

An act that violates the Code of Judicial Conduct constitutes gross misconduct which is considered a serious charge under Section 8(3) of Rule 140 of the Rules of Court, *viz.*:

SEC. 8. Serious charges. — Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

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[26] *Cacatian v. Liwanag*, AM No. MTJ-02-1418, 10 December 2003, 417 SCRA 350.

[27] A.M. No. 03-05-01-SC: Adopting the New Code of Judicial Conduct for the Philippine Judiciary. Manila: Supreme Court of the Philippines, 2004.

3. **Gross misconduct constituting violations of the Code of Judicial Conduct;**[28]
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits.

Under Section 11 of the same Rule, a serious charge metes out either of the following penalties, *viz.*:

SEC. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

The Office of the Court Administrator has correctly noted that there are attendant mitigating circumstances in the case at bar. These include Judge Garcia's retirement, twenty years of service in the judiciary, old age, subsequent reconciliation with Flores and that the cases do not involve graft and corruption. However, these mitigating circumstances are offset by previous administrative sanctions of a fine of ₱5,000.00 in MTJ-00-1282 for misconduct, oppression and abuse of authority, and reprimand

[28] *Emphasis supplied.*

in MTJ-88-208 for gross ignorance of the law and grave abuse of authority.

Prescinding from the foregoing, we uphold the imposition of a fine of ₱20,500.00 as recommended by the Office of the Court Administrator. The amount shall be deducted from the ₱80,000.00 which has been previously withheld from Judge Garcia's retirement benefits pursuant to the Court's Resolution dated 8 June 2004 in A.M. OCA IPI No. 03-1403-MTJ.[29]

The case for falsification against Flores is dismissed for lack of merit. Flores' statement in his Daily Time Record that he reported for work on 22 July 2002 did not constitute falsification. If he was not within the office premises from 12:40 p.m. to 5:30 p.m. as alleged by Judge Garcia, it was because he was on official business in San Carlos City, Negros Occidental as he was acting as Judge Garcia's driver. The other charge against Flores regarding the falsification of the Affidavit of Abunda is likewise dismissed for lack of evidence to prove the same.

IN VIEW WHEREOF, retired Judge Rodolfo B. Garcia of the Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental is found *GUILTY* of gross misconduct constituting a violation of the Code of Judicial Conduct under Section 8(3) of Rule 140 of the Rules of Court. The Court hereby imposes upon Judge Garcia a *FINE* of Twenty Thousand Five Hundred Pesos (₱20,500.00) to be deducted from the amount of ₱80,000.00 which was previously withheld by the Court from his retirement benefits pursuant to the Court's Resolution dated 8 June 2004 in A.M. OCA IPI No. 03-1403-MTJ. The administrative charge for falsification filed against Celfred P. Flores, also of the same court, is *DISMISSED* for lack of merit.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona, J., on leave.

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[29] *Julieta F. Ortega v. Judge Rodolfo B. Garcia.*

EN BANC

[G.R. No. 135808. October 6, 2008]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIO RICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR.,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REVISED SECURITIES ACT; THE MERE ABSENCE OF IMPLEMENTING RULES CANNOT EFFECTIVELY INVALIDATE PROVISIONS OF LAW WHERE A REASONABLE CONSTRUCTION THAT WILL SUPPORT THE LAW MAY BE GIVEN; SUSTAINED. — In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. It is well established that administrative authorities have the power to promulgate rules

and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation. In all, this Court rules that no implementing rules were needed to render effective Sections 8, 30 and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents may be investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.

2. ID.; ID.; INSIDER'S DUTY TO DISCLOSE WHEN TRADING; EXPLAINED. — ***Section 30 of the Revised Securities Act*** Section 30 of the Revised Securities Act reads: Sec. 30. **Insider's duty to disclose when trading.** — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise. (b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider. (c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider

it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability. (d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider. The provision explains in simple terms that the insider's misuse of nonpublic and undisclosed information is the gravamen of illegal conduct. The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor. Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone; and second, the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing. Under the law, what is required to be disclosed is a ***fact of "special significance"*** which may be (a) a material fact which would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) one which a reasonable person would consider especially important in determining his course of action with regard to the shares of stock.

3. ID.; ID.; BENEFICIAL OWNER; DEFINED AND CONSTRUED. — Section 36(a) of the Revised Securities Act is a straightforward provision that imposes upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof. x x x Section 36(a) refers to the "beneficial owner." *Beneficial owner* has been defined in the following manner: *[F]irst*, to indicate the interest of a beneficiary in trust property (also called "equitable ownership"); and *second*, to refer to the power of a corporate shareholder to buy or sell the shares, though the shareholder is not registered in the corporation's books as the owner. Usually, beneficial ownership is distinguished from naked ownership, which is

the enjoyment of all the benefits and privileges of ownership, as against possession of the bare title to property. Even assuming that the term "beneficial ownership" was vague, it would not affect respondents' case, where the respondents are directors and/or officers of the corporation, who are specifically required to comply with the reportorial requirements under Section 36(a) of the Revised Securities Act. The validity of a statute may be contested only by one who will sustain a direct injury as a result of its enforcement.

4. ID.; ID.; PURPOSE FOR THE ENACTMENT OF THE SPECIFIC PROVISIONS THEREOF, CLARIFIED. — Sections 30 and 36 of the Revised Securities Act were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public. No individual would invest in a market which can be manipulated by a limited number of corporate insiders. Such reaction would stifle, if not stunt, the growth of the securities market. To avert the occurrence of such an event, Section 30 of the Revised Securities Act prevented the unfair use of non-public information in securities transactions, while Section 36 allowed the SEC to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies. The Revised Securities Act was approved on 23 February 1982. The fact that the Full Disclosure Rules were promulgated by the SEC only on 24 July 1996 does not render ineffective in the meantime Section 36 of the Revised Securities Act. It is already unequivocal that the Revised Securities Act requires full disclosure and the Full Disclosure Rules were issued to make the enforcement of the law more consistent, efficient and effective. It is equally reasonable to state that the disclosure forms later provided by the SEC, do not, in any way imply that no compliance was required before the forms were provided. The effectivity of a statute which imposes reportorial requirements cannot be suspended by the issuance of specified forms, especially where compliance therewith may be made even without such forms. The forms merely made more efficient the processing of requirements already identified by the statute. For the same reason, the Court of Appeals made an evident mistake when it ruled that no civil, criminal or administrative actions can possibly be had against the respondents in connection with Sections 8, 30 and 36 of

the Revised Securities Act due to the absence of implementing rules. These provisions are sufficiently clear and complete by themselves. Their requirements are specifically set out, and the acts which are enjoined are determinable. In particular, Section 8 of the Revised Securities Act is a straightforward enumeration of the procedure for the registration of securities and the particular matters which need to be reported in the registration statement thereof. The Decision, dated 20 August 1998, provides no valid reason to exempt the respondent IRC from such requirements. The lack of implementing rules cannot suspend the effectivity of these provisions. Thus, this Court cannot find any cogent reason to prevent the SEC from exercising its authority to investigate respondents for violation of Section 8 of the Revised Securities Act.

5. ID.; ID.; INVESTIGATIVE DISTINGUISHED FROM ADJUDICATIVE FUNCTIONS. — In *Cariño v. Commission on Human Rights*, this Court sets out the distinction between investigative and adjudicative functions, thus: "Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely; inquire into systematically: "to search or inquire into" x x x to subject to an official probe x x x: to conduct an official inquiry." The purpose of an investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry. The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters." "Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass

judgment on: settle judicially: x x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x x to award or grant judicially in a case of controversy x x x." In a legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x Implies a judicial determination of a fact, and the entry of a judgment." There is no merit to the respondent's averment that the sections under Chapter 3, Book VII of the Administrative Code, do not distinguish between investigative and adjudicatory functions. Chapter 3, Book VII of the Administrative Code, is unequivocally entitled "Adjudication."

6. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; REQUIRES ONLY THAT EVERY LITIGANT BE GIVEN REASONABLE OPPORTUNITY TO APPEAR AND DEFEND HIS RIGHT AND TO INTRODUCE RELEVANT EVIDENCE IN HIS FAVOR; APPLICATION IN CASE AT BAR. — This is not to say that administrative bodies performing adjudicative functions are required to strictly comply with the requirements of Chapter 3, Rule VII of the Administrative Code, particularly, the right to cross-examination. It should be noted that under Section 2.2 of Executive Order No. 26, issued on 7 October 1992, abbreviated proceedings are prescribed in the disposition of administrative cases: 2. *Abbreviation of Proceedings*. All administrative agencies are hereby directed to adopt and include in their respective Rules of Procedure the following provisions: x x x 2.2 Rules adopting, unless otherwise provided by special laws and without prejudice to Section 12, Chapter 3, Book VII of the Administrative Code of 1987, the mandatory use of affidavits in lieu of direct testimonies and the preferred use of depositions whenever practicable and convenient. As a consequence, in proceedings before administrative or quasi-judicial bodies, such as the National Labor Relations Commission and the Philippine Overseas Employment Agency, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. In fact, the hearings before such agencies do not connote full adversarial proceedings. Thus, it is not necessary

for the rules to require affiants to appear and testify and to be cross-examined by the counsel of the adverse party. To require otherwise would negate the summary nature of the administrative or quasi-judicial proceedings. In *Atlas Consolidated Mining and Development Corporation v. Factoran, Jr.*, this Court stated that: [I]t is sufficient that administrative findings of fact are supported by evidence, or negatively stated, it is sufficient that findings of fact are not shown to be unsupported by evidence. Substantial evidence is all that is needed to support an administrative finding of fact, and substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In order to comply with the requirements of due process, what is required, among other things, is that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favor.

7. ID.; ID.; ABSOLUTE REPEAL OF LAW GENERALLY DEPRIVED THE COURT OF ITS AUTHORITY TO PENALIZE THE PERSON CHARGED WITH THE VIOLATION OF THE OLD LAW PRIOR TO ITS REPEAL; EXCEPTION. — The Securities Regulations Code absolutely repealed the Revised Securities Act. While the absolute repeal of a law generally deprives a court of its authority to penalize the person charged with the violation of the old law prior to its appeal, an exception to this rule comes about when the repealing law punishes the act previously penalized under the old law. The Court, in *Benedicto v. Court of Appeals*, sets down the rules in such instances: As a rule, an absolute repeal of a penal law has the effect of depriving the court of its authority to punish a person charged with violation of the old law prior to its repeal. This is because an unqualified repeal of a penal law constitutes a legislative act of rendering legal what had been previously declared as illegal, such that the offense no longer exists and it is as if the person who committed it never did so. There are, however, **exceptions** to the rule. One is the inclusion of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions. Another exception is where the repealing act **reenacts** the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending

cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused.

8. MERCANTILE LAW; SECURITIES REGULATIONS CODE; SECURITIES AND EXCHANGE COMMISSION; RETAINS LIMITED INVESTIGATORY POWERS; CLARIFIED. — Section 53 of the Securities Regulations Code clearly provides that criminal complaints for violations of rules and regulations enforced or administered by the SEC shall be referred to the Department of Justice (DOJ) for preliminary investigation, while the SEC nevertheless retains limited investigatory powers. Additionally, the SEC may still impose the appropriate administrative sanctions under Section 54 of the aforementioned law. In *Morato v. Court of Appeals*, the cases therein were still pending before the PED for investigation and the SEC for resolution when the Securities Regulations Code was enacted. The case before the SEC involved an intra-corporate dispute, while the subject matter of the other case investigated by the PED involved the schemes, devices, and violations of pertinent rules and laws of the company's board of directors. The enactment of the Securities Regulations Code did not result in the dismissal of the cases; rather, this Court ordered the transfer of one case to the proper regional trial court and the SEC to continue with the investigation of the other case. Under Section 45 of the Revised Securities Act, which is entitled *Investigations, Injunctions and Prosecution of Offenses*, the Securities Exchange Commission (SEC) has the authority to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act x x x." After a finding that a person has violated the Revised Securities Act, the SEC may refer the case to the DOJ for preliminary investigation and prosecution. While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*, this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of **probable cause**, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a violation of the Securities Regulations Code, wherein the procedure for

criminal prosecution was reproduced from Section 45 of the Revised Securities Act. This Court affirmed the dismissal, which it explained thus: The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229. A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted. We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint. The said case puts in perspective the nature of the investigation undertaken by the SEC, which is a requisite before a criminal case may be referred to the DOJ. The Court declared that it is imperative that the criminal prosecution be initiated before the SEC, the administrative agency with the special competence.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; INTERRUPTS THE PRESCRIPTION PERIOD; APPLICATION IN CASE AT BAR. — It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense: A preliminary investigation is

merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed or whether there is probable cause to believe that the accused is guilty thereof. To reiterate, the SEC must first conduct its investigations and make a finding of probable cause in accordance with the doctrine pronounced in *Baviera v. Paglinawan*. In this case, the DOJ was precluded from initiating a preliminary investigation since the SEC was halted by the Court of Appeals from continuing with its investigation. Such a situation leaves the prosecution of the case at a standstill, and neither the SEC nor the DOJ can conduct any investigation against the respondents, who, in the first place, sought the injunction to prevent their prosecution. All that the SEC could do in order to break the impasse was to have the Decision of the Court of Appeals overturned, as it had done at the earliest opportunity in this case. Therefore, the period during which the SEC was prevented from continuing with its investigation should not be counted against it. The law on the prescription period was never intended to put the prosecuting bodies in an impossible bind in which the prosecution of a case would be placed way beyond their control; for even if they avail themselves of the proper remedy, they would still be barred from investigating and prosecuting the case. Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.

TINGA, *J., concurring opinion*:

1. MERCANTILE LAW; SECURITIES ACT; SECURITIES REGULATION; RATIONALE. — The securities market is imbued with public interest and as such it is regulated. Specifically, the reasons given for securities regulation are (1) to protect investors, (2) to supply the informational needs of investors, (3) to ensure that stock prices conform to the fundamental value of the companies traded, (4) to allow shareholders to gain greater control over their corporate managers, and (5) to foster economic growth, innovation and access to capital.

2. ID.; ID.; ID.; DISCLOSURE REGULATION; JUSTIFIED. — Disclosure regulation requires issuers of securities to make public a large amount of financial information to actual and potential investors. The standard justification for disclosure rules is that the managers of the issuing firm have more information about the financial health and future of the firm than investors who own or are considering the purchase of the firm's securities. Financial activity regulation consists of rules about traders of securities and trading on or off the stock exchange. A prime example of this form of regulation is the set of rules against trading by insiders.

3. ID.; ID.; INSIDER TRADING; CONSTRUED. — In its barest essence, insider trading involves the trading of securities based on knowledge of material information not disclosed to the public at the time. Such activity is generally prohibited in many jurisdiction, including our own, though the particular scope and definition of "insider trading" depends on the legislation or case law of each jurisdiction. In the United States, the rule has been stated as "that anyone who, for trading for his own account in the securities of a corporation has 'access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone' may not take 'advantage of such information knowing it is unavailable to those with whom he is dealing,' *i.e.*, the investing public."

4. ID.; ID.; SECURITIES AND EXCHANGE COMMISSION; FUNCTION TO PROTECT THE INTEREST OF ORDINARY STOCKHOLDERS AND INVESTORS, JUSTIFIED. — The

ability of the SEC to effectively regulate the securities market depends on the breadth of its discretion to undertake regulatory activities. The intractable adherents of *laissez-faire* absolutism may decry the fact that there exists an SEC in the first place, yet it is that body which assures the protection of interest of ordinary stockholders and investors in the capital markets, interests which may be overlooked by the issuers of securities and their corporate overseers whose own interest may not necessarily align with that of the investing public. A "free market" that is not a "fair market" is not truly free, even if left unshackled by the Stated as it would in fact be shackled by the uninhibited greed of only the largest players. Respondents essentially contend that the SEC is precluded from enforcing its statutory powers unless it first translates the statute into a more comprehensive set of rules. Without denigrating the SEC's delegated rule-making power, each provision of the law already constitutes an executable command from the legislature. Any refusal on the part of the SEC to enforce the statute on the premise that it had yet to undergo the gauntlet of administrative interpretation is derelict to that body's legal mandate. By no means is the Congress impervious to the concern that certain statutory provisions are best enforced only after an administrative regulation implementing the same is promulgated. In such cases, the legislature is solicitous enough to specifically condition the enforcement of the statute upon the promulgation of the relevant administrative rules. Yet in cases where the legislature does not see fit to impose such a conditionality, the body tasked with enforcing the law has no choice but to do so. Any quibbling as to the precise meaning of the statutory language would be duly resolved through the exercise of judicial review. The revised Securities Act was later superseded by the Securities Regulation Code of 2000 (Rep. Act. No. 8799), a law which is admittedly more precise and ambitious in its regulation of such activity. The passage of that law is praiseworthy insofar as it strengthens the State's commitment to combat insider trading. And the promulgation of this decision confirms that the judiciary will not hesitate in performing its part in seeing to it that our securities laws are properly implemented and enforced.

5. ID.; ID.; ID.; INVESTIGATORY POWER THEREOF AKIN TO PRELIMINARY INVESTIGATION; UPHELD. — It should be emphasized that Sec. 45 of the Revised Securities Act

invests the SEC with the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated" and to refer criminal complaints for violations of the Act to the Department of Justice for preliminary investigation and prosecution before the proper court. The SEC's investigatory powers are obviously akin to the preliminary examination stage mentioned in *People v. Olarte.* The SEC's investigation and determination that there was indeed a violation of the provisions of the Revised Securities Act would set the stage for any further proceedings, such as preliminary investigation, that may be conducted by the DOJ after the case is referred to it by the SEC.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; FILING OF COMPLAINT FOR THE PURPOSE OF PRELIMINARY INVESTIGATION INTERRUPTS THE PERIOD OF PRESCRIPTION OF CRIMINAL RESPONSIBILITY; SUSTAINED. — This Court, in ruling in *Baviera v. Paglinawan* that the Department of Justice cannot conduct a preliminary investigation for the determination of probable cause for offenses under the Revised Securities Code, without an investigation first had by the SEC, essentially underscored that the exercise is a two-stage process. The procedure is similar to the two-phase preliminary investigation prior to the prosecution of a criminal case in court under the old rules. The venerable J.B.L. Reyes in *People v. Olarte* finally settled a long standing jurisprudential conflict at the time by holding that the **filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits.** The court gave three reasons in support of its decision, thus: x x x Several reasons buttress this conclusions: First the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is

filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do not on his part to initiate the prosecution is to file the requisite complaint.

CARPIO, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; PRESCRIPTION OF ACTIONS; ONLY THE INSTITUTION OF JUDICIAL PROCEEDINGS CAN INTERRUPT THE RUNNING OF THE PRESCRIPTIVE PERIOD. — In *Zaldivia v. Reyes, Jr.,* the Court ruled that the proceedings referred to in Section 2 of Act No. 3326 are **judicial proceedings and not administrative proceedings**. The Court held: x x x **This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.** This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." **The proceedings referred to in Section 2 thereof are "judicial proceedings,"** contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does. Indeed, Section 2 of Act No. 3326 expressly refers to the **"institution of judicial proceedings."** Contrary to the majority opinion's claim that "a preliminary investigation interrupts the prescriptive period," **only the institution of judicial proceedings can interrupt the running of the prescriptive period**. Thus, in the present case, since no criminal case was filed in any court against respondents since 1994 for violation of the Code, the prescriptive period of twelve years under Section 1 of Act No. 3326 has now expired.

2. MERCANTILE LAW; SECURITIES REGULATION CODE; SECURITIES AND EXCHANGE COMMISSION; EMPOWERS ONLY TO CONDUCT ADMINISTRATIVE INVESTIGATIONS AND TO IMPOSE FINES AND OTHER ADMINISTRATIVE

SANCTIONS; CONSTRUED. — The SEC has no jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code. Even if the Court of Appeals did not issue the injunction, the SEC could still not have instituted any judicial proceedings against respondents for criminal violation of the Code. The Code empowers the SEC to conduct **only administrative investigations and to impose fines and other administrative sanctions** against violators of the Code. Section 54.2 of the Code states that the "imposition of x x x administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation." **Thus, the criminal charges may proceed separately and independently of the administrative proceedings.** Under Section 53.1 of the Code, jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code **lies exclusively** with the Department of Justice (DOJ). Section 53.1 of the Code expressly states that **"all criminal complaints for violations of this Code x x x shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court."** No court ever enjoined the DOJ to institute judicial proceedings against respondents for criminal violation of the Code. Nothing prevented the DOJ's National Bureau of Investigation from investigating the alleged criminal violations of the Code by respondents. Thereafter, the DOJ could have conducted a preliminary investigation and instituted judicial proceedings against respondents. The DOJ did not and prescription has now set in.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 20 August 1998, rendered by the Court of Appeals in C.A.-G.R. SP No. 37036, enjoining petitioner Securities and Exchange Commission (SEC) from taking cognizance of or initiating any action against the respondent corporation Interport Resources Corporation (IRC) and members of its board of directors, respondents Manuel S. Recto, Rene S. Villarica, Pelagio Ricalde, Antonio Reina, Francisco Anonuevo, Joseph Sy and Santiago Tanchan, Jr., with respect to Sections 8, 30 and 36 of the Revised Securities Act. In the same Decision of the appellate court, all the proceedings taken against the respondents, including the assailed SEC Omnibus Orders of 25 January 1995 and 30 March 1995, were declared void.

The antecedent facts of the present case are as follows.

On 6 August 1994, the Board of Directors of IRC approved a Memorandum of Agreement with Ganda Holdings Berhad (GHB). Under the Memorandum of Agreement, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc. (GEHI),[2] which would own and operate a 102 megawatt (MW) gas turbine power-generating barge. The agreement also stipulates that GEHI would assume a five-year power purchase contract with National Power Corporation. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-September of 1994. In exchange, IRC will issue to GHB 55% of the expanded capital stock of IRC amounting to 40.88 billion shares which had a total par value of ₱488.44 million.[3]

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[1] Penned by Associate Justice Emeterio C. Cui with Associate Justices Angelina Sandoval-Gutierrez and Conrado M. Vasquez, Jr., concurring. *Rollo*, pp. 31-38.

[2] GEHI is a subsidiary wholly owned by GHB. CA *rollo*, p. 51.

[3] *Id.* at 46-49.

On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc. (PRCI). PRCI owns 25.724 hectares of real estate property in Makati. Under the Agreement, GHB, a member of the Westmont Group of Companies in Malaysia, shall extend or arrange a loan required to pay for the proposed acquisition by IRC of PRCI.[4]

IRC alleged that on 8 August 1994, a press release announcing the approval of the agreement was sent through facsimile transmission to the Philippine Stock Exchange and the SEC, but that the facsimile machine of the SEC could not receive it. Upon the advice of the SEC, the IRC sent the press release on the morning of 9 August 1994.[5]

The SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors, respondents herein, heavily traded IRC shares utilizing this material insider information. On 16 August 1994, the SEC Chairman issued a directive requiring IRC to submit to the SEC a copy of its aforesaid Memorandum of Agreement with GHB. The SEC Chairman further directed all principal officers of IRC to appear at a hearing before the Brokers and Exchanges Department (BED) of the SEC to explain IRC's failure to immediately disclose the information as required by the Rules on Disclosure of Material Facts.[6]

In compliance with the SEC Chairman's directive, the IRC sent a letter dated 16 August 1994 to the SEC, attaching thereto copies of the Memorandum of Agreement. Its directors, Manuel Recto, Rene Villarica and Pelagio Ricalde, also appeared before the SEC on 22 August 1994 to explain IRC's alleged failure to immediately disclose material information as required under the Rules on Disclosure of Material Facts.[7]

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[4] *Id.*

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

[6] *Rollo*, pp. 9-10.

[7] CA *rollo*, p. 6; Rules Requiring Disclosure of Material Facts by Corporations Whose Securities Are Listed in Any Stock Exchange or Registered/ Licensed Under the Securities Act, issued by the Securities and Exchange Commission on 8 February 1973; see *rollo*, p. 65.

On 19 September 1994, the SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure of Material Facts, in connection with the Old Securities Act of 1936, when it failed to make timely disclosure of its negotiations with GHB. In addition, the SEC pronounced that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Section 30, in relation to Section 36, of the Revised Securities Act.[8]

Respondents filed an Omnibus Motion, dated 21 September 1994, which was superseded by an Amended Omnibus Motion, filed on 18 October 1994, alleging that the SEC had no authority to investigate the subject matter, since under Section 8 of Presidential Decree No. 902-A,[9] as amended by Presidential Decree No. 1758, jurisdiction was conferred upon the Prosecution and Enforcement Department (PED) of the SEC. Respondents also claimed that the SEC violated their right to due process when it ordered that the respondents appear before the SEC and "show cause why no administrative, civil or criminal sanctions should be imposed on them," and, thus, shifted the burden of proof to the respondents. Lastly, they sought to have their cases tried jointly given the identical factual situations surrounding the alleged violation committed by the respondents.[10]

Respondents also filed a Motion for Continuance of Proceedings on 24 October 1994, wherein they moved for

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[8] *Rollo*, p. 10.

[9] SEC. 8. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the exclusive authority to investigate, on complaint or *motu proprio*, any act or omission of the Board of Directors/ Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission.

[10] CA *rollo*, pp. 68-94.

discontinuance of the investigations and the proceedings before the SEC until the undue publicity had abated and the investigating officials had become reasonably free from prejudice and public pressure.[11]

No formal hearings were conducted in connection with the aforementioned motions, but on 25 January 1995, the SEC issued an Omnibus Order which thus disposed of the same in this wise:[12]

> WHEREFORE, premised on the foregoing considerations, the Commission resolves and hereby rules:
>
> 1. To create a special investigating panel to hear and decide the instant case in accordance with the Rules of Practice and Procedure Before the Prosecution and Enforcement Department (PED), Securities and Exchange Commission, to be composed of Attys. James K. Abugan, Medardo Devera (Prosecution and Enforcement Department), and Jose Aquino (Brokers and Exchanges Department), which is hereby directed to expeditiously resolve the case by conducting continuous hearings, if possible.
>
> 2. To recall the show cause orders dated September 19, 1994 requiring the respondents to appear and show cause why no administrative, civil or criminal sanctions should be imposed on them.
>
> 3. To deny the Motion for Continuance for lack of merit.

Respondents filed an Omnibus Motion for Partial Reconsideration,[13] questioning the creation of the special investigating panel to hear the case and the denial of the Motion for Continuance. The SEC denied reconsideration in its Omnibus Order dated 30 March 1995.[14]

The respondents filed a petition before the Court of Appeals docketed as C.A.-G.R. SP No. 37036, questioning the Omnibus

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[11] *Id.* at 95-107.

[12] *Id.* at 39-43.

[13] *Id.* at 152-162.

[14] *Id.* at 44.

Orders dated 25 January 1995 and 30 March 1995.[15] During the proceedings before the Court of Appeals, respondents filed a Supplemental Motion[16] dated 16 May 1995, wherein they prayed for the issuance of a writ of preliminary injunction enjoining the SEC and its agents from investigating and proceeding with the hearing of the case against respondents herein. On 5 May 1995, the Court of Appeals granted their motion and issued a writ of preliminary injunction, which effectively enjoined the SEC from filing any criminal, civil or administrative case against the respondents herein.[17]

On 23 October 1995, the SEC filed a Motion for Leave to Quash SEC Omnibus Orders so that the case may be investigated by the PED in accordance with the SEC Rules and Presidential Decree No. 902-A, and not by the special body whose creation the SEC had earlier ordered.[18]

The Court of Appeals promulgated a Decision[19] on 20 August 1998. It determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which the respondents allegedly violated. The Court of Appeals likewise noted that it found no statutory authority for the SEC to initiate and file any suit for civil liability under Sections 8, 30 and 36 of the Revised Securities Act. Thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection. It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders for the sole purpose of re-filing the same case against the respondents.[20]

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[15] *Id.* at 1-37.

[16] *CA rollo*, pp. 214-230.

[17] *Id.* at 237-238.

[18] *Id.* at 269-270.

[19] Penned by Associate Justice Emeterio C. Cui with Associate Justices Angelina Sandoval-Gutierrez and Conrado M. Vasquez, Jr., concurring. *Rollo*, pp. 31-38.

[20] *Id.* at 35-36.

The Court of Appeals further decided that the Rules of Practice and Procedure Before the PED, which took effect on 14 April 1990, did not comply with the statutory requirements contained in the Administrative Code of 1997. Section 8, Rule V of the Rules of Practice and Procedure Before the PED affords a party the right to be present but without the right to cross-examine witnesses presented against him, in violation of Section 12(3), Chapter 3, Book VII of the Administrative Code.[21]

In the dispositive portion of its Decision, dated 20 August 1998, the Court of Appeals ruled that[22]:

> WHEREFORE, [herein petitioner SEC's] Motion for Leave to Quash SEC Omnibus Orders is hereby DENIED. The petition for *certiorari*, prohibition and *mandamus* is GRANTED. Consequently, all proceedings taken against [herein respondents] in this case, including the Omnibus Orders of January 25, 1995 and March 30, 1995 are declared null and void. **The writ of preliminary injunction is hereby made permanent and, accordingly, [SEC] is hereby prohibited from taking cognizance or initiating any action**, be they civil, criminal, or administrative against [respondents] with respect to Sections 8 (Procedure for Registration), 30 (Insider's duty to disclose when trading) and 36 (Directors, Officers and Principal Stockholders) in relation to Sections 46 (Administrative sanctions) 56 (Penalties) 44 (Liabilities of Controlling persons) and 45 (Investigations, injunctions and prosecution of offenses) of the Revised Securities Act and Section 144 (Violations of the Code) of the Corporation Code. (Emphasis provided.)

The SEC filed a Motion for Reconsideration, which the Court of Appeals denied in a Resolution[23] issued on 30 September 1998.

Hence, the present petition, which relies on the following grounds[24]:

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[21] *Id.* at 36.

[22] *Id.* at 37.

[23] *Id.* at 40-41.

[24] *Id.* at 14.

I

THE COURT OF APPEALS ERRED WHEN IT DENIED PETITIONER'S MOTION FOR LEAVE TO QUASH THE ASSAILED SEC OMNIBUS ORDERS DATED JANUARY 25 AND MARCH 30, 1995.

II

THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE IS NO STATUTORY AUTHORITY WHATSOEVER FOR PETITIONER SEC TO INITIATE AND FILE ANY SUIT BE THEY CIVIL, CRIMINAL OR ADMINISTRATIVE AGAINST RESPONDENT CORPORATION AND ITS DIRECTORS WITH RESPECT TO SECTION 30 (INSIDER'S DUTY TO DISCOLSED [sic] WHEN TRADING) AND 36 (DIRECTORS OFFICERS AND PRINCIPAL STOCKHOLDERS) OF THE REVISED SECURITIES ACT; AND

III

THE COURT OF APPEALS ERRED WHEN IT RULED THAT RULES OF PRACTICE AND PROSECUTION BEFORE THE PED AND THE SICD RULES OF PROCEDURE ON ADMINISTRATIVE ACTIONS/ PROCEEDINGS[25] ARE INVALID AS THEY FAIL TO COMPLY WITH THE STATUTORY REQUIREMENTS CONTAINED IN THE ADMINISTRATIVE CODE OF 1987.

The petition is impressed with merit.

Before discussing the merits of this case, it should be noted that while this case was pending in this Court, Republic Act No. 8799, otherwise known as the Securities Regulation Code, took effect on 8 August 2000. Section 8 of Presidential Decree No. 902-A, as amended, which created the PED, was already repealed as provided for in Section 76 of the Securities Regulation Code:

SEC. 76. *Repealing Clause*. — The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A, as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof,

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[25] The Securities Investigation and Clearing Department (SICD) Rules of Procedure on Administrative Actions/Proceedings took effect on 29 December 1996, after the violations allegedly took place.

inconsistent with any provision of this Code are hereby repealed or modified accordingly.

Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.

The Court now proceeds with a discussion of the present case.

I. Sections 8, 30 and 36 of the Revised Securities Act do not require the enactment of implementing rules to make them binding and effective.

The Court of Appeals ruled that absent any implementing rules for Sections 8, 30 and 36 of the Revised Securities Act, no civil, criminal or administrative actions can possibly be had against the respondents without violating their right to due process and equal protection, citing as its basis the case *Yick Wo v. Hopkins*.[26] This is untenable.

In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.[27] The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. In *People v. Rosenthal*,[28] this Court ruled that:

In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty

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[26] 118 U.S. 356.

[27] *Secretary of the Department of Transportation and Communications v. Mabalot*, 428 Phil. 154, 164 (2002); *Larin v. Executive Secretary*, 345 Phil. 962, 979 (1997).

[28] 68 Phil. 328, 348 (1939).

if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith." (25 R.C.L., pp. 810, 811)

In *Garcia v. Executive Secretary*,[29] the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:

The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.

The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management.[30] To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.[31] It is well established that administrative authorities have the

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[29] G.R. No. 100883, 2 December 1991, 204 SCRA 516, 523.

[30] *Geukeko v. Araneta*, 102 Phil. 706, 712-713 (1957).

[31] *Calalang v. Williams*, 70 Phil. 726, 733 (1940).

power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute.[32] Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.

The reliance placed by the Court of Appeals in *Yick Wo v. Hopkins*[33] shows a glaring error. In the cited case, this Court found unconstitutional an ordinance which gave the board of supervisors authority to refuse permission to carry on laundries located in buildings that were not made of brick and stone, because it violated the equal protection clause and was highly discriminatory and hostile to Chinese residents and not because the standards provided therein were vague or ambiguous.

This Court does not discern any vagueness or ambiguity in **Sections 30 and 36 of the Revised Securities Act**, such that the acts proscribed and/or required would not be understood by a person of ordinary intelligence.

Section 30 of the Revised Securities Act

Section 30 of the Revised Securities Act reads:

> Sec. 30. **Insider's duty to disclose when trading**. — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise.

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[32] *Del Mar v. The Philippine Veterans Administration*, 151-A Phil. 792, 802 (1973).

[33] *Supra* note 23.

(b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider.

(c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.

(d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider.

The provision explains in simple terms that the insider's misuse of nonpublic and undisclosed information is the gravamen of illegal conduct. The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor. Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone; and second, the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.[34]

In the United States (U.S.), the obligation to disclose or abstain has been traditionally imposed on corporate "insiders," particularly officers, directors, or controlling stockholders, but that definition

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[34] *In the Matter of Cady, Roberts & Co.,* 40 S.E.C. 907 (1961).

has since been expanded.[35] The term "insiders" now includes persons whose relationship or former relationship to the issuer gives or gave them access to a fact of special significance about the issuer or the security that is not generally available, and one who learns such a fact from an insider knowing that the person from whom he learns the fact is such an insider. Insiders have the duty to disclose material facts which are known to them by virtue of their position but which are not known to persons with whom they deal and which, if known, would affect their investment judgment. In some cases, however, there may be valid corporate reasons for the nondisclosure of material information. Where such reasons exist, an issuer's decision not to make any public disclosures is not ordinarily considered as a violation of insider trading. At the same time, the undisclosed information should not be improperly used for non-corporate purposes, particularly to disadvantage other persons with whom an insider might transact, and therefore the insider must abstain from entering into transactions involving such securities.[36]

Respondents further aver that under Section 30 of the Revised Securities Act, the SEC still needed to define the following terms: ***"material fact," "reasonable person," "nature and reliability"*** and ***"generally available."*** [37] In determining whether or not these terms are vague, these terms must be evaluated in the context of Section 30 of the Revised Securities Act. To fully understand how the terms were used in the aforementioned provision, a discussion of what the law recognizes as a *fact of special significance* is required, since the duty to disclose such fact or to abstain from any transaction is imposed on the insider only in connection with a *fact of special significance*.

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[35] *Id.* citing H.R. Rep. No. 1383, 73rd Cong., 2d Sess. 13 (1934); S. Rep. No.792, 73rd Cong., 2d Sess. 9 (1934). A significant purpose of the Exchange Act was to eliminate the idea that the use of inside information for personal advantage was a normal emolument of corporate office.

[36] *In the Matter of Investors Management Co., Inc.*, 44 SEC 633, 29 July 1971; *Securities and Exchange Commission v. Texas Gulf Sulfur Co.*, 401 F. 2d 833, 13 August 1968.

[37] *Rollo*, p. 459.

Under the law, what is required to be disclosed is a ***fact of "special significance"*** which may be (a) a material fact which would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) one which a reasonable person would consider especially important in determining his course of action with regard to the shares of stock.

(a) ***Material Fact*** — The concept of a "material fact" is not a new one. As early as 1973, the Rules Requiring Disclosure of Material Facts by Corporations Whose Securities Are Listed In Any Stock Exchange or Registered/Licensed Under the Securities Act, issued by the SEC on 29 January 1973, explained that "[a] fact is material if it induces or tends to induce or otherwise affect the sale or purchase of its securities." Thus, Section 30 of the Revised Securities Act provides that if a fact affects the sale or purchase of securities, as well as its price, then the insider would be required to disclose such information to the other party to the transaction involving the securities. This is the first definition given to a "fact of special significance."

(b.1) ***Reasonable Person*** — The second definition given to a fact of special significance involves the judgment of a "reasonable person." Contrary to the allegations of the respondents, a "reasonable person" is not a problematic legal concept that needs to be clarified for the purpose of giving effect to a statute; rather, it is the standard on which most of our legal doctrines stand. The doctrine on negligence uses the discretion of the "reasonable man" as the standard.[38] A purchaser in good faith must also take into account facts which put a "reasonable man" on his guard.[39]

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[38] Negligence is defined as the omission to do something which a *reasonable man*, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and *reasonable man* would not do. (Emphasis provided.) *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102-03, 16 July 1992, 211 SCRA 517, 539, citing *Layugan v. Intermediate Appellate Court*, G.R. No 73998, 14 November 1988, 167 SCRA 363, 373.

[39] *Dela Cruz v. Intermediate Appellate Court*, G.R. No. 72981, 29 January 1988, 157 SCRA 660, 671 and *Balatbat v. Court of Appeals*, 329 Phil. 858, 874 (1996).

In addition, it is the belief of the reasonable and prudent man that an offense was committed that sets the criteria for probable cause for a warrant of arrest.[40] This Court, in such cases, differentiated the reasonable and prudent man from "a person with training in the law such as a prosecutor or a judge," and identified him as "the average man on the street," who weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have in abundance.[41] In the same vein, the U.S. Supreme Court similarly determined its standards by the actual significance in the deliberations of a "reasonable investor," when it ruled in *TSC Industries, Inc. v. Northway, Inc.*,[42] that the determination of materiality "requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him."

(b.2) ***Nature and Reliability*** — The factors affecting the second definition of a "fact of special significance," which is of such importance that it is expected to affect the judgment of a reasonable man, were substantially lifted from a test of materiality pronounced in the case *In the Matter of Investors Management Co., Inc*.[43]:

> Among the factors to be considered in determining whether information is material under this test are the degree of its specificity, the extent to which it differs from information previously publicly disseminated, and its reliability in light of its nature and source and the circumstances under which it was received.

It can be deduced from the foregoing that the "nature and reliability" of a significant fact in determining the course of action a reasonable person takes regarding securities must be

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[40] *Webb v. Hon. de Leon*, 317 Phil. 758, 779 (1995).

[41] *Id.* at 780.

[42] 48 L ed 2d 757, 766 (1976).

[43] *Supra* note 33.

clearly viewed in connection with the particular circumstances of a case. To enumerate all circumstances that would render the "nature and reliability" of a fact to be of special significance is close to impossible. Nevertheless, the proper adjudicative body would undoubtedly be able to determine if facts of a certain "nature and reliability" can influence a reasonable person's decision to retain, sell or buy securities, and thereafter explain and justify its factual findings in its decision.

(c) ***Materiality Concept*** — A discussion of the "materiality concept" would be relevant to both a material fact which would affect the market price of a security to a significant extent and/or a fact which a reasonable person would consider in determining his or her cause of action with regard to the shares of stock. Significantly, what is referred to in our laws as a *fact of special significance* is referred to in the U.S. as the "materiality concept" and the latter is similarly not provided with a precise definition. In *Basic v. Levinson*,[44] the U.S. Supreme Court cautioned against confining materiality to a rigid formula, stating thus:

> A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the Securities Act and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive.

Moreover, materiality "will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity."[45] In drafting the Securities Act of 1934, the U.S. Congress put emphasis on the limitations to the definition of materiality:

> Although the Committee believes that ideally it would be desirable to have absolute certainty in the application of the materiality concept,

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[44] 99 L ed 2d 194, 211 (1988).

[45] *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (1968).

it is its view that such a goal is illusory and unrealistic. **The materiality concept is judgmental in nature and it is not possible to translate this into a numerical formula. The Committee's advice to the [SEC] is to avoid this quest for certainty and to continue consideration of materiality on a case-by-case basis as disclosure problems are identified.**" House Committee on Interstate and Foreign Commerce, Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, 95th Cong., 1st Sess., 327 (Comm.Print 1977). (Emphasis provided.)[46]

(d) ***Generally Available*** — Section 30 of the Revised Securities Act allows the insider the defense that in a transaction of securities, where the insider is in possession of facts of special significance, such information is "generally available" to the public. Whether information found in a newspaper, a specialized magazine, or any cyberspace media be sufficient for the term "generally available" is a matter which may be adjudged given the particular circumstances of the case. The standards cannot remain at a standstill. A medium, which is widely used today was, at some previous point in time, inaccessible to most. Furthermore, it would be difficult to approximate how the rules may be applied to the instant case, where investigation has not even been started. Respondents failed to allege that the negotiations of their agreement with GHB were made known to the public through any form of media for there to be a proper appreciation of the issue presented.

Section 36(a) of the Revised Securities Act

As regards Section 36(a) of the Revised Securities Act, respondents claim that the term "beneficial ownership" is vague and that it requires implementing rules to give effect to the law. Section 36(a) of the Revised Securities Act is a straightforward provision that imposes upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof. The said provision reads:

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[46] *Basic v. Levinson, supra* note 41 at 211.

Sec. 36. **Directors, officers and principal stockholders**. — (a) Every person who is directly or indirectly the beneficial owner of more than ten per centum of any [class] of any equity security which is registered pursuant to this Act, or who is [a] *director or an officer* of the issuer of such security, shall file, at the time of the registration of such security on a securities exchange or by the effective date of a registration statement or within ten days after he becomes such a beneficial owner, director or officer, a statement with the Commission and, if such security is registered on a securities exchange, also with the exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is registered on a securities exchange, shall also file with the exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. (Emphasis provided.)

Section 36(a) refers to the "beneficial owner." *Beneficial owner* has been defined in the following manner:

[F]irst, to indicate the interest of a beneficiary in trust property (also called "equitable ownership"); and *second*, to refer to the power of a corporate shareholder to buy or sell the shares, though the shareholder is not registered in the corporation's books as the owner. Usually, beneficial ownership is distinguished from naked ownership, which is the enjoyment of all the benefits and privileges of ownership, as against possession of the bare title to property.[47]

Even assuming that the term "beneficial ownership" was vague, it would not affect respondents' case, where the respondents are directors and/or officers of the corporation, who are specifically required to comply with the reportorial requirements under Section 36(a) of the Revised Securities Act. The validity of a statute may be contested only by one who will sustain a direct injury as a result of its enforcement.[48]

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[47] *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 1 December 2004, 445 SCRA 1, 155-156, citing Black's *Law Dictionary*, 5th edition.

[48] *Gonzales v. Hon. Narvasa*, 392 Phil. 518, 528 (2000), citing *Sanidad v. Commission on Elections*, G.R. No. L-44640, 12 October 1976, 73 SCRA 333, 358.

Sections 30 and 36 of the Revised Securities Act were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public. No individual would invest in a market which can be manipulated by a limited number of corporate insiders. Such reaction would stifle, if not stunt, the growth of the securities market. To avert the occurrence of such an event, Section 30 of the Revised Securities Act prevented the unfair use of non-public information in securities transactions, while Section 36 allowed the SEC to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies.

In the case *In the Matter of Investor's Management Co.*,[49] it was cautioned that "the broad language of the anti-fraud provisions," which include the provisions on insider trading, should not be "circumscribed by fine distinctions and rigid classifications." The ambit of anti-fraud provisions is necessarily broad so as to embrace the infinite variety of deceptive conduct.[50]

In *Tatad v. Secretary of Department of Energy*,[51] this Court brushed aside a contention, similar to that made by the respondents in this case, that certain words or phrases used in a statute do not set determinate standards, declaring that:

> Petitioners contend that the words "as far as practicable," "declining" and "stable" should have been defined in R.A. No. 8180 as they do not set determinate and determinable standards. This stubborn submission deserves scant consideration. The dictionary meanings of these words are well settled and cannot confuse men of reasonable intelligence. x x x. The fear of petitioners that these words will result in the exercise of executive discretion that will run riot is thus groundless. To be sure, the Court has sustained the validity of similar, if not more general standards in other cases.

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[49] *Supra* note 33.

[50] *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc*., 11 L ed 2d 237, 247 (1963).

[51] 346 Phil. 321, 362 (1997).

Among the words or phrases that this Court upheld as valid standards were "simplicity and dignity,"[52] "public interest,"[53] and "interests of law and order."[54]

The Revised Securities Act was approved on 23 February 1982. The fact that the Full Disclosure Rules were promulgated by the SEC only on 24 July 1996 does not render ineffective in the meantime Section 36 of the Revised Securities Act. It is already unequivocal that the Revised Securities Act requires full disclosure and the Full Disclosure Rules were issued to make the enforcement of the law more consistent, efficient and effective. It is equally reasonable to state that the disclosure forms later provided by the SEC, do not, in any way imply that no compliance was required before the forms were provided. The effectivity of a statute which imposes reportorial requirements cannot be suspended by the issuance of specified forms, especially where compliance therewith may be made even without such forms. The forms merely made more efficient the processing of requirements already identified by the statute.

For the same reason, the Court of Appeals made an evident mistake when it ruled that no civil, criminal or administrative actions can possibly be had against the respondents in connection with Sections 8, 30 and 36 of the Revised Securities Act due to the absence of implementing rules. These provisions are sufficiently clear and complete by themselves. Their requirements are specifically set out, and the acts which are enjoined are determinable. In particular, Section 8[55] of the Revised Securities Act is a straightforward enumeration of the procedure for the

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[52] *Balbuna v. Hon. Secretary of Education*, 110 Phil. 150, 154 (1960).

[53] *People v. Rosenthal*, 68 Phil. 328, 342 (1939).

[54] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 702 (1919).

[55] Sec. 8. **Procedure for registration.** — (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

(1) Name of issuer and, if incorporated, place of incorporation.

registration of securities and the particular matters which need to be reported in the registration statement thereof. The Decision,

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(2) The location of the issuer's principal business office, and if such issuer is a non-resident or its place of office is outside of the Philippines, the name and address of its agent in the Philippines authorized to receive notice.

(3) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen, if the issuer be a corporation, association, trust, or other entity; of all the partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed.

(4) The names and addresses of the underwriters.

(5) The general character of the business actually transacted or to be transacted by, and the organization and financial structure of, the issuer including identities of all companies controlling, controlled by or commonly controlled with the issuer.

(6) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than ten (10%) per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement.

(7) The amount of securities of the issuer held by any person specified in subparagraphs (3), (4), and (6) of this subsection, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe.

(8) A statement of the capitalization of the issuer and of all companies controlling, controlled by or commonly controlled with the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up; the number and classes of shares in which such capital stock is divided; par value thereof, or if it has no par value, the stated or assigned value thereof; a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof.

(9) A copy of the security for the registration of which application is made.

(10) A copy of any circular, prospectus, advertisement, letter, or communication to be used for the public offering of the security.

(11) A statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than ten (10%) per centum in the aggregate of such options.

(12) The amount of capital stock of each class issued or included in the shares of stock to be offered.

(13) The amount of the funded indebtedness outstanding and to be created by the security to be offered, with a brief statement of the date, maturity, and

dated 20 August 1998, provides no valid reason to exempt the respondent IRC from such requirements. The lack of implementing

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character of such debt, rate of interest, character or amortization provisions, other terms and conditions thereof and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect.

(14) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts and the sources thereof.

(15) The remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and the ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them whenever such remuneration exceeded sixty thousand (₱60,000.00) pesos during any such year.

(16) The amount of issue of the security to be offered.

(17) The estimated net proceeds to be derived from the security to be offered.

(18) The price at which the security is proposed to be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security by filing an amended registration statement.

(19) All commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything of value, paid, to be set aside, or disposed of, or understanding with or for the benefit of any other person in which any underwriter is interested, made in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated.

(20) The amount or estimated amounts, itemized in reasonable detail, of expenses, other than commission specified in the next preceding paragraph, incurred or to be incurred by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges.

(21) The net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security.

rules cannot suspend the effectivity of these provisions. Thus, this Court cannot find any cogent reason to prevent the SEC

(22) Any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment.

(23) The names and addresses of the vendors and the purchase price of any property or goodwill, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition.

(24) Full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than ten (10%) per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date.

(25) The names and addresses of independent counsel who have passed on the legality of the issue.

(26) Dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which has been executed not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service shall be deemed a material contract.

Any contract, whether or not made in the ordinary course of business with any stockholder, whether a natural or juridical person, owning more than ten (10%) per centum of the shares of the issuer shall be deemed a material contract for the purpose of this Act.

(27) A balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable with intangible items segregated, including any loan to or from any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. In the event any such assets consist of shares of stock in other companies, the balance sheet and profit and loss statements of such companies for the past three years shall likewise be enclosed. All the liabilities of the issuer, including surplus of the issuer, showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement is not certified

from exercising its authority to investigate respondents for violation of Section 8 of the Revised Securities Act.

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by an independent certified public accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent certified public accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted.

(28) A profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with statement of the basis upon which credit is computed. Such statement shall also differentiate between recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent certified public accountant.

(29) Any liabilities of the issuer to companies controlling or controlled by the issuer shall be disclosed in full detail as to use of the proceeds thereof, the maturity and repayment schedule, nature of security thereof, the rate of interest and other terms and conditions thereof. If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business, certified by an independent certified public accountant, meeting the requirements of subparagraph (28) of this subsection, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of subparagraph (27) hereof of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer more than ninety days prior to the filing of the registration statement.

(30) A copy of any agreement or agreements or, if identical agreements are used, the forms thereof made with any underwriter, including all contracts and agreements referred to in subparagraph (19) hereof.

(31) A copy of the opinion or opinions of independent counsel in respect to the legality of the issue.

(32) A copy of all material contracts referred to in subparagraph (26) hereof, but no disclosure shall be required by the Commission of any portion

II. The right to cross-examination is not absolute and cannot be demanded during investigative proceedings before the PED.

In its assailed Decision dated 20 August 1998, the Court of Appeals pronounced that the PED Rules of Practice and Procedure

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of any such contract if the disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors.

(33) A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which securities have been or are to be issued in payment.

(34) The amount of cash to be paid as promotion fees, or of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(35) In connection with securities issued by a person engaged in the business of developing, exploiting or operating mineral claims, a sworn statement of a mining engineer stating the ore possibilities of the mine and such other information in connection therewith as will show the quality of the ore in such claims, and the unit cost of extracting it.

(36) Unless previously filed and registered with the Commission and brought up to date:

(a) A copy of its articles of incorporation with all amendments thereof and its existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation;

(b) A copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged, if the issuer is a trust;

(c) A copy of its articles of partnership or association and all the papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, syndicate, or any other form of organization.

(37) A copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered by the issuer and outstanding on the part of companies controlling or controlled by the issuer.

(38) Where the issuer or registrant is not formed, organized and existing under the laws of the Philippines or is not domiciled in the Philippines, a written power of attorney, certified and authenticated in accordance with law, designating some individual person, who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against him, and consenting that service upon such resident agent shall be admitted as valid and proper service upon the issuer or registrant, and if at any time that service cannot be made upon such resident agent, service shall be made upon the Commission.

Additional information or documents, including written information from an expert, may be required, or anyone of the above requirements may be dispensed with, depending on the necessity thereof for the protection of the public investors, or their applicability to the class of securities sought to be registered, as the case may be.

The registration statement shall be signed by the issuer, its principal executive officer, its principal operating officer, its principal financial officer, its comptroller or principal accounting officer or persons performing similar functions. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed.

Upon filing of the registration statement, the registrant shall pay to the Commission a fee of not more than one-tenth of one per centum of the maximum aggregate price at which such securities are proposed to be offered and the fact of such filing shall be immediately published by the Commission, at the expense of the registrant, in two newspapers of general circulation in the Philippines, once a week for two consecutive weeks, reciting that a registration statement for the sale of such security has been filed with it, and that the aforesaid registration statement, as well as the papers attached thereto, are open to inspection during business hours, by interested parties, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

Any interested party may file an opposition to the registration within ten days from the publication.

If after the completion of the aforesaid publication, the Commission finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements and conditions for the protection of the investors have been complied with, and unless there are grounds to reject a registration statement as herein provided, it shall as soon as feasible enter an order making the registration effective, and issue to the registrant a permit reciting that such person, its brokers or agents, are entitled to offer the securities named in said certificate, with such terms and conditions as it may impose in the public interest and for the protection of investors.

The Commission shall, however, advise the public that the issuance of such permit shall not be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way given approval to the security included in the registration statement. Every permit and any other statement, printed or otherwise, for public consumption, that makes reference to such permit shall clearly and distinctively state that the issuance thereof is only permissive and does not constitute a recommendation or endorsement of the securities permitted to be offered for sale. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

was invalid since Section 8, Rule V[56] thereof failed to provide for the parties' right to cross-examination, in violation of the Administrative Code of 1987 particularly Section 12(3), Chapter 3, Book VII thereof. This ruling is incorrect.

Firstly, Section 4, Rule I of the PED Rules of Practice and Procedure, categorically stated that the proceedings before the PED are summary in nature:

Section 4. Nature of Proceedings — Subject to the requirements of due process, proceedings before the "PED" shall be summary in nature not necessarily adhering to or following the technical rules

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Notwithstanding the foregoing, the Commission, for the guidance of investors, may require issuers to submit their securities to rating by securities rating agencies accredited by the Commission, to provide all information necessary therefor, and to report such rating in the registration statement and prospectus, if any, offering the securities.

If any change occurs in the facts set forth in the registration statement, it shall be the obligation of the issuer, dealer or underwriter who filed the original registration statement to submit to the Commission for approval an amended registration statement.

The Commission, in its order, may fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities in the Philippines and the maximum amount of compensation which the issuer shall pay for mining claims and mineral rights for which provision is made by the issuer for payment in cash or securities. The amount of compensation which shall be paid the owner or holder of such mining claims or mineral rights shall be a fair valuation thereof, as may be fixed by the Commission, after consultation with the Bureau of Mines, and after receiving such technical information as the issuer or dealer or the owner or owners of such claims may care to submit in the premises.

A copy of the order of the Commission making the registration effective, together with the registration statement, shall be transmitted to the exchange wherein the security may be listed and shall be available for inspection by any interested party during reasonable hours on any business day.

The order shall likewise be published, at the expense of the registrant, once in a newspaper of general circulation within ten days from its promulgation.

The same rules shall apply to any amendment to the registration statement.

[56] Section 8. Order of Investigation — The parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the Hearing Officer which the latter may propound to the parties or witnesses concerned.

of evidence obtaining in the courts of law. The Rules of Court may apply in said proceedings in suppletory character whenever practicable.

Rule V of the PED Rules of Practice and Procedure further specified that:

> Section 5. Submission of Documents — During the preliminary conference/hearing, or immediately thereafter, the Hearing Officer may require the parties to simultaneously submit their respective verified position papers accompanied by all supporting documents and the affidavits of their witnesses, if any which shall take the place of their direct testimony. The parties shall furnish each other with copies of the position papers together with the supporting affidavits and documents submitted by them.
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> Section 6. Determination of necessity of hearing. — Immediately after the submission by the parties of their position papers and supporting documents, the Hearing Officer shall determine whether there is a need for a formal hearing. At this stage, he may, in his discretion, and for the purpose of making such determination, elicit pertinent facts or information, including documentary evidence, if any, from any party or witness to complete, as far as possible, the facts of the case. Facts or information so elicited may serve as basis for his clarification or simplifications of the issues in the case. Admissions and stipulation of facts to abbreviate the proceedings shall be encouraged.
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> Section 7. Disposition of Case. If the Hearing Officer finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall so inform the parties stating the reasons therefor and shall ask them to acknowledge the fact that they were so informed by signing the minutes of the hearing and the case shall be deemed submitted for resolution.

As such, the PED Rules provided that the Hearing Officer may require the parties to submit their respective verified position papers, together with all supporting documents and affidavits of witnesses. A formal hearing was not mandatory; it was within the discretion of the Hearing Officer to determine whether there was a need for a formal hearing. Since, according to the foregoing rules, the holding of a hearing before the PED is discretionary,

then the right to cross-examination could not have been demanded by either party.

Secondly, it must be pointed out that Chapter 3, Book VII of the Administrative Code, entitled "Adjudication," does not affect the investigatory functions of the agencies. The law creating the PED, Section 8 of Presidential Decree No. 902-A, as amended, defines the authority granted to the PED, thus:

> SEC. 8. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision**, the exclusive authority to investigate**, on complaint or *motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; **to file and prosecute** in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission. (Emphasis provided.)

The law creating PED empowers it to investigate violations of the rules and regulations promulgated by the SEC and to file and prosecute such cases. It fails to mention any adjudicatory functions insofar as the PED is concerned. Thus, the PED Rules of Practice and Procedure need not comply with the provisions of the Administrative Code on adjudication, particularly Section 12(3), Chapter 3, Book VII.

In *Cariño v. Commission on Human Rights*,[57] this Court sets out the distinction between investigative and adjudicative functions, thus:

> "Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely; inquire

[57] G.R. No. 96681, 2 December 1991, 204 SCRA 483, 495-496.

into systematically: "to search or inquire into" x x x to subject to an official probe x x x: to conduct an official inquiry." The purpose of an investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."

"Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x x to award or grant judicially in a case of controversy x x x."

In a legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x Implies a judicial determination of a fact, and the entry of a judgment."

There is no merit to the respondent's averment that the sections under Chapter 3, Book VII of the Administrative Code, do not distinguish between investigative and adjudicatory functions. Chapter 3, Book VII of the Administrative Code, is unequivocally entitled "Adjudication."

Respondents insist that the PED performs adjudicative functions, as enumerated under Section 1(h) and (j), Rule II; and Section 2(4), Rule VII of the PED Rules of Practice and Procedure:

Section 1. Authority of the Prosecution and Enforcement Department — Pursuant to Presidential Decree No. 902-A, as amended by Presidential Decree No. 1758, the Prosecution and Enforcement Department is primarily charged with the following:

x x x x x x x x x

(h) Suspends or revokes, after proper notice and hearing in accordance with these Rules, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the following grounds:

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;

x x x x x x x x x

(j) Imposes charges, fines and fees, which by law, it is authorized to collect;

x x x x x x x x x

Section 2. Powers of the Hearing Officer. The Hearing Officer shall have the following powers:

x x x x x x x x x

4. To cite and/or declare any person in direct or indirect contempt in accordance with pertinent provisions of the Rules of Court.

Even assuming that these are adjudicative functions, the PED, in the instant case, exercised its investigative powers; thus, respondents do not have the requisite standing to assail the validity of the rules on adjudication. A valid source of a statute or a rule can only be contested by one who will sustain a direct injury as a result of its enforcement.[58] In the instant case,

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[58] *Gonzales v. Hon. Narvasa*, *supra* note 45 at 528, citing *Sanidad v. Commission on Elections*, *supra* note 45 at 358; and *Valmonte v. Philippine Charity Sweepstakes*, G.R. No. 78716, 22 September 1987, Resolution.

respondents are only being investigated by the PED for their alleged failure to disclose their negotiations with GHB and the transactions entered into by its directors involving IRC shares. The respondents have not shown themselves to be under any imminent danger of sustaining any personal injury attributable to the exercise of adjudicative functions by the SEC. They are not being or about to be subjected by the PED to charges, fees or fines; to citations for contempt; or to the cancellation of their certificate of registration under Section 1(h), Rule II of the PED Rules of Practice and Procedure.

To repeat, the only powers which the PED was likely to exercise over the respondents were investigative in nature, to wit:

> Section 1. Authority of the Prosecution and Enforcement Department — Pursuant to Presidential Decree No. 902-A, as amended by Presidential Decree No. 1758, the Prosecution and Enforcement Department is primarily charged with the following:
>
> x x x x x x x x x
>
> b. Initiates proper investigation of corporations and partnerships or persons, their books, records and other properties and assets, involving their business transactions, in coordination with the operating department involved;
>
> x x x x x x x x x
>
> e. Files and prosecutes civil or criminal cases before the Commission and other courts of justice involving violations of laws and decrees enforced by the Commission and the rules and regulations promulgated thereunder;
>
> f. Prosecutes erring directors, officers and stockholders of corporations and partnerships, commercial paper issuers or persons in accordance with the pertinent rules on procedures;

The authority granted to the PED under Section 1(b), (e), and (f), Rule II of the PED Rules of Practice and Procedure, need not comply with Section 12, Chapter 3, Rule VII of the Administrative Code, which affects only the adjudicatory functions of administrative bodies. Thus, the PED would still be able to investigate the respondents under its rules for their alleged failure

to disclose their negotiations with GHB and the transactions entered into by its directors involving IRC shares.

This is not to say that administrative bodies performing adjudicative functions are required to strictly comply with the requirements of Chapter 3, Rule VII of the Administrative Code, particularly, the right to cross-examination. It should be noted that under Section 2.2 of Executive Order No. 26, issued on 7 October 1992, abbreviated proceedings are prescribed in the disposition of administrative cases:

> 2. *Abbreviation of Proceedings*. All administrative agencies are hereby directed to adopt and include in their respective Rules of Procedure the following provisions:
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> x x x x x x x x x
>
> 2.2 Rules adopting, unless otherwise provided by special laws and without prejudice to Section 12, Chapter 3, Book VII of the Administrative Code of 1987, the mandatory use of affidavits in lieu of direct testimonies and the preferred use of depositions whenever practicable and convenient.

As a consequence, in proceedings before administrative or quasi-judicial bodies, such as the National Labor Relations Commission and the Philippine Overseas Employment Agency, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence.[59] In fact, the hearings before such agencies do not connote full adversarial proceedings.[60] Thus, it is not necessary for the rules to require affiants to appear and testify and to be cross-examined by the counsel of the adverse party. To require otherwise would negate the summary nature of the administrative or quasi-judicial proceedings.[61] In

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[59] *Rabago v. National Labor Relations Commission*, G.R. No. 82868, 5 August 1991, 200 SCRA 158, 164-165; *Rase v. National Labor Relations Commission*, G.R. No. 110637, 7 October 1994, 237 SCRA 523, 532.

[60] *Philippine Airlines, Inc. v. Tongson*, 459 Phil. 742, 753 (2003).

[61] *Rase v. National Labor Relations Commission*, *supra* note 56 at 534.

Atlas Consolidated Mining and Development Corporation v. Factoran, Jr.,[62] this Court stated that:

> [I]t is sufficient that administrative findings of fact are supported by evidence, or negatively stated, it is sufficient that findings of fact are not shown to be unsupported by evidence. Substantial evidence is all that is needed to support an administrative finding of fact, and substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

In order to comply with the requirements of due process, what is required, among other things, is that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favor.[63]

III. The Securities Regulations Code did not repeal Sections 8, 30 and 36 of the Revised Securities Act since said provisions were reenacted in the new law.

The Securities Regulations Code absolutely repealed the Revised Securities Act. While the absolute repeal of a law generally deprives a court of its authority to penalize the person charged with the violation of the old law prior to its appeal, an exception to this rule comes about when the repealing law punishes the act previously penalized under the old law. The Court, in *Benedicto v. Court of Appeals*, sets down the rules in such instances:[64]

> As a rule, an absolute repeal of a penal law has the effect of depriving the court of its authority to punish a person charged with violation of the old law prior to its repeal. This is because an unqualified repeal of a penal law constitutes a legislative act of rendering legal what had been previously declared as illegal, such that the offense no longer exists and it is as if the person who committed it never did so. There are, however, **exceptions** to the rule. One is the inclusion

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[62] G.R. No. 75501, 15 September 1987, 154 SCRA 49, 54.

[63] *Philippine Airlines, Inc. v. Tongson, supra* note 57 at 753.

[64] 416 Phil. 722, 746-747 (2001).

of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions. Another exception is where the repealing act **reenacts** the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused. (Emphasis provided.)

In the present case, a criminal case may still be filed against the respondents despite the repeal, since Sections 8,[65] 12,[66]

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[65] **SEC. 8.** *Requirement of Registration of Securities.*

8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

8.2. The Commission may conditionally approve the registration statement under such terms as it may deem necessary.

8.3. The Commission may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.

8.4. 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 public inspection at reasonable hours on business days.

8.5. The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.

[66] **SEC. 12.** *Procedure for Registration of Securities.* —

12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

12.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain such

information or documents as it may, by rule, prescribe. It may dispense with any such requirement, or may require additional information or documents, including written information from an expert, depending on the necessity thereof or their applicability to the class of securities sought to be registered.

12.3. The information required for the registration of any kind, and all securities, shall include, among others, the effect of the securities issue on ownership, on the mix of ownership, especially foreign and local ownership.

12.4. The registration statement shall be signed by the issuer's executive officer, its principal operating officer, its principal financial officer, its comptroller, principal accounting officer, its corporate secretary or persons performing similar functions accompanied by a duly verified resolution of the board of directors of the issuer corporation. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

12.5. a) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth (1/10) of one *per centum* (1%) of the maximum aggregate price at which such securities are proposed to be offered. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of the aggregate price of the offering.

b) Notice of the filing of the registration statement shall be immediately published by the issuer, at its own expense, in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, or in such other manner as the Commission by rule shall prescribe, reciting that a registration statement for the sale of such security has been filed, and that the aforesaid registration statement, as well as the papers attached thereto are open to inspection at the Commission during business hours, and copies thereof, photostatic or otherwise, shall be furnished to interested parties at such reasonable charge as the Commission may prescribe.

12.6. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and

26,[67] 27[68] and 23[69] of the Securities Regulations Code impose duties that are substantially similar to Sections 8, 30 and 36 of the repealed Revised Securities Act.

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that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

12.7. Upon effectivity of the registration statement, the issuer shall state under oath in every prospectus that all registration requirements have been met and that all information are true and correct as represented by the issuer or the one making the statement. Any untrue statement of fact or omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading shall constitute fraud.

[67] **SEC. 26.** *Fraudulent Transactions.* — It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

[68] **SEC. 27.** *Insider's Duty to Disclose When Trading.* —

27.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from such relationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material non-public information at the time of the purchase or sale.

27.2. For purposes of this Section, information is "material non-public" if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

27.3. It shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

27.4. a) It shall be unlawful where a tender offer has commenced or is about to commence for:

(i) Any person (other than the tender offeror) who is in possession of material non-public information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is non-public and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and

(ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4 (a)(i).

(b) For purposes of this subsection the term "securities of the issuer sought or to be sought by such tender offer" shall include any securities convertible or exchangeable into such securities or any options or rights in any of the foregoing securities.

[69] **SEC. 23.** *Transactions of Directors, Officers and Principal Stockholders.*

23.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement

Section 8 of the Revised Securities Act, which previously provided for the registration of securities and the information that needs to be included in the registration statements, was expanded under Section 12, in connection with Section 8 of the Securities Regulations Code. Further details of the information required to be disclosed by the registrant are explained in the Amended Implementing Rules and Regulations of the Securities Regulations Code, issued on 30 December 2003, particularly Sections 8 and 12 thereof.

Section 30 of the Revised Securities Act has been reenacted as Section 27 of the Securities Regulations Code, still penalizing an insider's misuse of material and non-public information about the issuer, for the purpose of protecting public investors. Section 26 of the Securities Regulations Code even widens the coverage of punishable acts, which intend to defraud public investors through various devices, misinformation and omissions.

Section 23 of the Securities Regulations Code was practically lifted from Section 36(a) of the Revised Securities Act. Both provisions impose upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof.

Clearly, the legislature had not intended to deprive the courts of their authority to punish a person charged with violation of the old law that was repealed; in this case, the Revised Securities Act.

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with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

IV. The SEC retained the jurisdiction to investigate violations of the Revised Securities Act, reenacted in the Securities Regulations Code, despite the abolition of the PED.

Section 53 of the Securities Regulations Code clearly provides that criminal complaints for violations of rules and regulations enforced or administered by the SEC shall be referred to the Department of Justice (DOJ) for preliminary investigation, while the SEC nevertheless retains limited investigatory powers.[70] Additionally, the SEC may still impose the appropriate administrative sanctions under Section 54 of the aforementioned law.[71]

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[70] SEC. 53. *Investigations, Injunctions and Prosecution of Offenses*. — 53.1 The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: *Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,*That the investigation, prosecution, and trial of such cases shall be given priority.

[71] SEC. 54. *Administrative Sanctions*. — 54.1 If after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any

In *Morato v. Court of Appeals*,[72] the cases therein were still pending before the PED for investigation and the SEC for resolution when the Securities Regulations Code was enacted. The case before the SEC involved an intra-corporate dispute, while the subject matter of the other case investigated by the PED involved the schemes, devices, and violations of pertinent rules and laws of the company's board of directors. The enactment of the Securities Regulations Code did not result in the dismissal of the cases; rather, this Court ordered the transfer of one case to the proper regional trial court and the SEC to continue with the investigation of the other case.

The case at bar is comparable to the aforecited case. In this case, the SEC already commenced the investigative proceedings against respondents as early as 1994. Respondents were called to appear before the SEC and explain their failure to disclose pertinent information on 14 August 1994. Thereafter, the SEC Chairman, having already made initial findings that respondents failed to make timely disclosures of their negotiations with GHB, ordered a special investigating panel to hear the case. The investigative proceedings were interrupted only by the writ of preliminary injunction issued by the Court of Appeals, which became permanent by virtue of the Decision, dated 20 August 1998, in C.A.-G.R. SP No. 37036. During the pendency of this case, the Securities Regulations Code repealed the Revised Securities Act. As in *Morato v. Court of Appeals*, the repeal cannot deprive SEC of its jurisdiction to continue investigating

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registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances.

[72] G.R. No. 141510, 13 August 2004, 436 SCRA 438, 458.

the case; or the regional trial court, to hear any case which may later be filed against the respondents.

V. The instant case has not yet prescribed.

Respondents have taken the position that this case is moot and academic, since any criminal complaint that may be filed against them resulting from the SEC's investigation of this case has already prescribed.[73] They point out that the prescription period applicable to offenses punished under special laws, such as violations of the Revised Securities Act, is twelve years under Section 1 of Act No. 3326, as amended by Act No. 3585 and Act No. 3763, entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Act."[74] Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot. Such position, however, is incongruent with the factual circumstances of this case, as well as the applicable laws and jurisprudence.

It is an established doctrine that a preliminary investigation interrupts the prescription period.[75] A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense:

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[73] *Rollo*, pp. 649-652.

[74] Section 1. Violation penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and **(d) after twelve years for any other offense punished by imprisonment for six years or more,** except the crime of treason, which shall prescribe after twenty years: provided, however, That all offenses against any law or par of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months. (Emphasis provided.)

[75] *Llenes v. Dicdican*, G.R. No. 122274, 31 July 1986, 260 SCRA 207, 217-220; and *Baytan v. Commission on Elections*, G.R. No. 153945, 4 February 2003, 396 SCRA 703, 713.

A preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed or whether there is probable cause to believe that the accused is guilty thereof.[76]

Under Section 45 of the Revised Securities Act, which is entitled *Investigations, Injunctions and Prosecution of Offenses*, the Securities Exchange Commission (SEC) has the authority to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act XXX." After a finding that a person has violated the Revised Securities Act, the SEC may refer the case to the DOJ for preliminary investigation and prosecution.

While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*,[77] this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of **probable cause**, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a violation of the Securities Regulations Code, wherein the procedure for criminal prosecution was reproduced from Section 45 of the Revised Securities Act.[78] This Court affirmed the dismissal, which it explained thus:

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[76] *Bautista v. Court of Appeals,* G.R. No. 143375, 6 July 2001, 360 SCRA 618, 623.

[77] G.R. No. 168380, 8 February 2007.

[78] The Revised Securities Act provides that:

Sec. 45. Investigations, injunctions and prosecution of offenses. — (a) **The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder**, and may require or permit any person to file with it a statement in writing, under

The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229.

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oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates: Provided, however, That no such investigation shall be conducted unless the person investigated is furnished with a copy of any complaint which may have been the cause of the initiation of the investigation or is notified in writing of the purpose of such investigation: Provided, further, That all criminal complaints for violations of this Act, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the National Prosecution Service of the Ministry of Justice for preliminary investigation and prosecution before the proper court: and, Provided, finally, That the investigation, prosecution, and trial of such cases shall be given priority. (Emphasis provided.)

The Securities Regulations Code provides that:

SEC. 53. *Investigations, Injunctions and Prosecution of Offenses* . — 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary

A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.

We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.

The said case puts in perspective the nature of the investigation undertaken by the SEC, which is a requisite before a criminal case may be referred to the DOJ. The Court declared that it is imperative that the criminal prosecution be initiated before the SEC, the administrative agency with the special competence.

It should be noted that the SEC started investigative proceedings against the respondents as early as 1994. This investigation effectively interrupted the prescription period. However, said proceedings were disrupted by a preliminary injunction issued by the Court of Appeals on 5 May 1995, which effectively enjoined the SEC from filing any criminal, civil, or administrative case against the respondents herein.[79] Thereafter, on 20 August 1998, the appellate court issued the assailed Decision in C.A.

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investigation and prosecution before the proper court: *Provided, furthermore*, That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,* That the investigation, prosecution, and trial of such cases shall be given priority.

[79] *Rollo,* p. 32.

G.R. SP. No. 37036 ordering that the writ of injunction be made permanent and prohibiting the SEC from taking cognizance of and initiating any action against herein respondents. The SEC was bound to comply with the aforementioned writ of preliminary injunction and writ of injunction issued by the Court of Appeals enjoining it from continuing with the investigation of respondents for 12 years. Any deviation by the SEC from the injunctive writs would be sufficient ground for contempt. Moreover, any step the SEC takes in defiance of such orders will be considered void for having been taken against an order issued by a court of competent jurisdiction.

An investigation of the case by any other administrative or judicial body would likewise be impossible pending the injunctive writs issued by the Court of Appeals. Given the ruling of this Court in *Baviera v. Paglinawan*,[80] the DOJ itself could not have taken cognizance of the case and conducted its preliminary investigation without a prior determination of probable cause by the SEC. Thus, even presuming that the DOJ was not enjoined by the Court of Appeals from conducting a preliminary investigation, any preliminary investigation conducted by the DOJ would have been a futile effort since the SEC had only started with its investigation when respondents themselves applied for and were granted an injunction by the Court of Appeals.

Moreover, the DOJ could not have conducted a preliminary investigation or filed a criminal case against the respondents during the time that issues on the effectivity of Sections 8, 30 and 36 of the Revised Securities Act and the PED Rules of Practice and Procedure were still pending before the Court of Appeals. After the Court of Appeals declared the aforementioned statutory and regulatory provisions invalid and, thus, no civil, criminal or administrative case may be filed against the respondents for violations thereof, the DOJ would have been at a loss, as there was no statutory provision which respondents could be accused of violating.

Accordingly, it is only after this Court corrects the erroneous ruling of the Court of Appeals in its Decision dated 20 August

[80] G.R. No. 168380, 8 February 2007, 515 SCRA 170.

1998 that either the SEC or DOJ may properly conduct any kind of investigation against the respondents for violations of Sections 8, 30 and 36 of the Revised Securities Act. Until then, the prescription period is deemed interrupted.

To reiterate, the SEC must first conduct its investigations and make a finding of probable cause in accordance with the doctrine pronounced in *Baviera v. Paglinawan*.[81] In this case, the DOJ was precluded from initiating a preliminary investigation since the SEC was halted by the Court of Appeals from continuing with its investigation. Such a situation leaves the prosecution of the case at a standstill, and neither the SEC nor the DOJ can conduct any investigation against the respondents, who, in the first place, sought the injunction to prevent their prosecution. All that the SEC could do in order to break the impasse was to have the Decision of the Court of Appeals overturned, as it had done at the earliest opportunity in this case. Therefore, the period during which the SEC was prevented from continuing with its investigation should not be counted against it. The law on the prescription period was never intended to put the prosecuting bodies in an impossible bind in which the prosecution of a case would be placed way beyond their control; for even if they avail themselves of the proper remedy, they would still be barred from investigating and prosecuting the case.

Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the

[81] *Id*.

preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.

VI. The Court of Appeals was justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders dated 23 October 1995.

The SEC avers that the Court of Appeals erred when it denied its Motion for Leave to Quash SEC Omnibus Orders, dated 23 October 1995, in the light of its admission that the PED had the sole authority to investigate the present case. On this matter, this Court cannot agree with the SEC.

In the assailed decision, the Court of Appeals denied the SEC's Motion for Leave to Quash SEC Omnibus Orders, since it found other issues that were more important than whether or not the PED was the proper body to investigate the matter. Its refusal was premised on its earlier finding that no criminal, civil, or administrative case may be filed against the respondents under Sections 8, 30 and 36 of the Revised Securities Act, due to the absence of any implementing rules and regulations. Moreover, the validity of the PED Rules on Practice and Procedure was also raised as an issue. The Court of Appeals, thus, reasoned that if the quashal of the orders was granted, then it would be deprived of the opportunity to determine the validity of the aforementioned rules and statutory provisions. In addition, the SEC would merely pursue the same case without the Court of Appeals having determined whether or not it may do so in accordance with due process requirements. Absent a determination of whether the SEC may file a case against the respondents based on the assailed provisions of the Revised Securities Act, it would have been improper for the Court of Appeals to grant the SEC's Motion for Leave to Quash SEC Omnibus Orders.

IN ALL, this Court rules that no implementing rules were needed to render effective Sections 8, 30 and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents

may be investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.[82]

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. This Court hereby *REVERSES* the assailed Decision of the Court of Appeals promulgated on 20 August 1998 in CA-G.R. SP No. 37036 and *LIFTS* the permanent injunction issued pursuant thereto. This Court further *DECLARES* that the investigation of the respondents for violations of Sections 8, 30 and 36 of the Revised Securities Act may be undertaken by the proper authorities in accordance with the Securities Regulations Code. No costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Velasco, Jr., Reyes, and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J., Austria-Martinez, Carpio Morales, and *Azcuna, JJ.,* join in the separate concurring opinion of *J.* Tinga.

Tinga, J., please see concurring opinion.

Carpio, J., see dissenting opinion.

Nachura and *Brion, JJ.,* no part.

Corona, J., on official leave.

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[82] Section 5.2 of Republic Act No. 8799, known as the Securities Regulations Code, enacted on 19 July 2000, reads:

5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

CONCURRING OPINION

TINGA, *J.*:

While I fully concur with the *ponencia* ably penned by Justice Chico-Nazario, I write separately to highlight the factual and legal background behind the legal proscription against the blight that is "insider trading." This case is the farthest yet this Court has explored the matter, and it is heartening that our decision today affirms the viability for prosecutions against insider trading, an offense that assaults the integrity of our vital securities market. This case bears special significance, even if it does not dwell on the guilt or innocence of petitioners who are charged with insider trading, simply because the arguments raised by them essentially assail the validity of our laws against insider trading. Since we deny *certiorari* and debunk the challenge, our ruling will embolden our securities regulators to investigate and prosecute insider trading cases, thereby ensuring a more stable, mature and investor-friendly stock market.

The securities market, when active and vibrant, is an effective engine of economic growth. It is more able to channel capital as it tends to favor start-up and venture capital companies. To remain attractive to investors, however, the stock market should be *fair* and *orderly*. All the regulations, all the requirements, all the procedures and all the people in the industry should strive to achieve this avowed objective. Manipulative devices and deceptive practices, including insider trading, throw a monkey wrench right into the heart of the securities industry. When someone trades in the market with unfair advantage in the form of highly valuable secret inside information, all other participants are defrauded. All of the mechanisms become worthless. Given enough of stock market scandals coupled with the related loss of faith in the market, such abuses could presage a severe drain of capital. And investors would eventually feel more secure with their money invested elsewhere.[1]

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[1] See COLIN CHAPMAN, *How the Stock Market Works* (1988 ed.), pp. 151-152.

The securities market is imbued with public interest and as such it is regulated. Specifically, the reasons given for securities regulation are (1) to protect investors, (2) to supply the informational needs of investors, (3) to ensure that stock prices conform to the fundamental value of the companies traded, (4) to allow shareholders to gain greater control over their corporate managers, and (5) to foster economic growth, innovation and access to capital.[2]

In checking securities fraud, regulation of the stock market assumes quite a few forms, the most common being disclosure regulation and financial activity regulation.

Disclosure regulation requires issuers of securities to make public a large amount of financial information to actual and potential investors. The standard justification for disclosure rules is that the managers of the issuing firm have more information about the financial health and future of the firm than investors who own or are considering the purchase of the firm's securities. Financial activity regulation consists of rules about traders of securities and trading on or off the stock exchange. A prime example of this form of regulation is the set of rules against trading by insiders.[3]

I.

In its barest essence, insider trading involves the trading of securities based on knowledge of material information not disclosed to the public at the time.[4] Such activity is generally prohibited in many jurisdictions, including our own, though the particular scope and definition of "insider trading" depends on the legislation or case law of each jurisdiction. In the United States, the rule

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[2] See R. JENNINGS, H. MARSH, JR., J. COFFEE, JR. AND J. SALGIMAN, *SECURITIES REGULATION: CASES AND MATERIALS* (8th ed., 1998), pp. 1-6.

[3] *F. Babozzi and F. Modigliani, Capital Markets* (3rd ed., 2006).

[4] "Generally speaking, insider trading is trading in securities while in possession of material nonpublic information." *S. BAINBRIDGE, CORPORATION LAW AND ECONOMICS* (2002 ed.), p. 519.

has been stated as "that anyone who, for trading for his own account in the securities of a corporation has 'access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone' may not take 'advantage of such information knowing it is unavailable to those with whom he is dealing', *i.e.*, the investing public."[5]

It would be useful to examine the historical evolution of the rule.

In the United States, legal abhorrence of insider trading preceded the modern securities market. Prior to 1900, it was treatise law that the doctrine that officers and directors of corporations are trustees of the stockholders does not extend to their private dealings with stockholders or others, though in such dealings they take advantage of knowledge gained through their official position.[6] Under that doctrine, the misrepresentation or fraudulent concealment of a material fact by such corporate officers or directors gave rise to liability based on general fraud as understood in common law, yet such liability would arise only if the defendant actively prevented the plaintiff from looking into or inquiring upon the affairs or condition of the corporation and its prospects for dividends.[7] The rule, as understood then, did not encompass a positive duty for public disclosure of any material information pertinent to a corporation and/or its securities.

The first paradigm shift came with a decision in 1903 of the Georgia Supreme Court in *Oliver v. Oliver*,[8] which pronounced that the shareholder had a right to disclosure, and the corporation a corresponding duty to disclose such material information, based on the principle that "[w]here the director obtains the information

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[5] *Matter of Cady, Roberts & Co.*, 40 SEC 907, 912 (1961); cited in *Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968).

[6] BAINBRIDGE, *supra* note 4 at 520 citing H.L. Wilgus, *Purchase of Shares of a Corporation by a Director from a Shareholder*, 8 Mich. L. Rev. 267, 267 (1910).

[7] *Id.*, citing *Carpenter v. Danforth*, 52 Barb. 581, 589 (N.Y.Sup. Ct.1868).

[8] 45 S.E. 232 (Ga.1903).

giving added value to the stock by virtue of his official position, he holds the information in trust for the benefit of [the shareholders]."[9] Subsequent state jurisprudence affirmed this fiduciary obligation to disclose material nonpublic information to shareholders before trading with them, otherwise known as the "minority" or the "duty to disclose" rule. However, the U.S. Supreme Court in 1909 expressed preference for a different rule in *Strong v. Repide*,[10] acknowledging that the corporate directors generally owed no duty to disclose material facts when trading with shareholders, unless there were "special circumstances" that gave rise to such duty. The "special circumstances," as identified in *Strong*, were the concealment of identity by the defendant, and the failure to disclose significant facts having a dramatic impact on the stock price.

Both the "special circumstances" and "duty to disclose" rules gained adherents in the next several years. In the meantime, the 1920s saw the unprecedented popularity of the stock market with the general public, which was widely taken advantage of by corporations and brokers through unscrupulous practices. The American stock market collapse of October 1929, which helped trigger the worldwide Great Depression, left fully half of the $25 million worth of securities floated during the post-First World War period as worthless, to the injury of thousands of individuals who had invested their life savings in those securities.[11] The consequent wellspring of concern over the welfare of the investors animated the passage of the first U.S. federal securities laws, such as the Securities Exchange Act of 1934 which declared that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions."[12]

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[9] *Id.*

[10] 213 U.S. 419 (1909).

[11] See R. JENNINGS, H. MARSH, JR., J. COFFEE, JR. AND J. SELIGMAN, *supra* note 2 at 2; citing H.R.Rep. No. 85, 73d Cong., 1st Sess. 2 (1933).

[12] *Id*.

Section 10(b) of the Securities Exchange Act of 1934 provided that:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of the national securities exchange — x x x
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.[13]

It is this provision which stands as the core statutory authority prohibiting insider trading under U.S. federal law.[14] Yet the provision itself does not utilize the term "insider trading," and indeed doubts have been expressed whether it was intended at all by the U.S. Congress to impose a ban on insider trading through the 1934 Securities Exchange Act.[15] At the same time, the provision did grant to the U.S. Securities and Exchange Commission (U.S. SEC) the authority to promulgate rules and regulations "as necessary or appropriate in the public interest or for the protection of investors." This power was exercised by the U.S. SEC in 1942, when it enacted Rule 10b-5, which has been described as "the foundation on which the modern insider trading prohibition rests."[16] The Rule reads:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
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> (a) To employ any device, scheme, or artifice to defraud,
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> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the

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[13] 15 U.S.C. § 78j(b).

[14] BAINBRIDGE, *supra* note 4 at 525.

[15] *Id.* at 526.

[16] *Id.* at 527.

statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceipt upon any person,

in connection with the purchase or sale of any security.[17]

Again, the rule by itself did not provide for an explicit prohibition on insider trading practices, and commentators have expressed doubts whether the U.S. SEC in 1942 had indeed contemplated that the rule work to such effect.[18] Yet undoubtedly the Rule created a powerful antifraud weapon,[19] and it would finally be applied by the U.S. SEC as a prohibition against insider trading in the 1961 case of *In re Cady, Roberts & Co.*[20]

The facts of that case hew closely to our traditional understanding of insider trading. A corporate director of Curtiss-Wright Corporation had told one of his business partners, Gimpel, that the board of directors had decided to reduce the company's quarterly dividend. Armed with such information even before the news was announced, Gimpel sold several thousand shares in the corporation's stock held in customer accounts over which he had discretionary trading authority. When the news of the reduced dividend was publicly disclosed, the corporation's share prices predictably dropped, and the owners of the sold shares were able to avoid injury. The U.S. SEC ruled that Gimpel had violated Rule 10b-5, even though he was not an insider privy

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[17] 17 CFR §240.10b-5.

[18] "According to one account, the decision to adopt the rule and model it on Section 17(a) [of the 1933 Securities Exchange Act] was arrived at without any deliberation, with the only official discussion consisting of one SEC Commissioner reportedly observing, "we are against fraud, aren't we?" T.L. HAZEN, *The Law of Securities Regulation* (4th ed., 2002), at 571; citing J. Blackmun, *dissenting*, *Blue Chips Stamps v. Manor Drug Stores*, 421 U.S. 723, 767 (1975).

[19] *Id.* at 570-571.

[20] *Supra* note 5.

to the confidential material information, but merely a "tippee" of that insider. In doing so, the U.S. SEC formulated the "disclose or abstain" rule, requiring that an insider in possession of material nonpublic information must disclose such information before trading or, if disclosure is impossible or improper, abstain from trading.[21]

Not long after, the American federal courts adopted the principles pronounced by the U.S. SEC in *Cady, Roberts*, and the rule evolved that insider trading was deemed a form of securities fraud within the U.S. SEC's regulatory jurisdiction.[22] Subsequently, jurisprudential limitations were imposed by the U.S. Supreme Court, ruling for example that an insider bears a duty to disclose on the basis of a fiduciary relationship of trust and confidence as between him and the shareholders;[23] or that a tippee is liable for insider trading only if the tipper breached a fiduciary relationship by disclosing information to the tippee, who knew or had reason to know of the breach of duty.[24] In response to these decisions, the U.S. SEC promulgated Rule 14e-3, which specifically prohibited insiders of the bidder and the target company from divulging confidential information about a tender offer to persons that are likely to violate the rule by trading on the basis of that information.[25]

In the United Kingdom, insider trading is considered as a type of "market abuse" assuming the form of behavior "based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant

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[21] BAINBRIDGE, *supra* note 4 at 528.

[22] Particularly, through the case of *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir.1968), which has been described as "the first of the truly seminal insider trading cases," even though much of its core insider trading holding had since been rejected by the U.S. Supreme Court. See BAINBRIDGE, *supra* note 4, at 529.

[23] *U.S. v. Chiarella*, 445 U.S. 222 (1980).

[24] *Dirks v. SEC*, 463 U.S. 646 (1984).

[25] See BAINBRIDGE, *supra* note 4, at 537.

when deciding the terms on which transactions in investments of the kind in question should be effected."[26]

The Philippines has adopted statutory regulations in the trading of securities, tracing in fact as far back as 1936, or just two years after the enactment of the US Securities Exchange Act of 1934. The then National Assembly of the Philippines enacted in 1936 Commonwealth Act No. 83, also known as the Securities Act,[27] designed to regulate the sale of securities and to create a Securities and Exchange Commission (SEC) for that purpose. Notably, Com. Act No. 83 did not contain any explicit provision prohibiting insider trading in precise terms, even as it contained specific provisions prohibiting the manipulation of stock prices[28] or the employment of manipulative and deceptive devices.[29] This silence is unsurprising, considering that American federal law had similarly failed to enact so specific a prohibition and that Rule 10b-5 of the U.S. SEC had not yet come into existence then.

However, in January of 1973, the SEC would issue a set of rules,[30] which required specific insiders to "make a resonably full, fair and accurate disclosure of every material fact relating or affecting it which is of interest to investors." [31] It was explained therein that a fact is material if it "induces or tends to induce or otherwise affect the sale or purchase of the securities of the issuing corporation, such as an acquisition of mining claims, patent or formula, real estate, or similar capital assets; discovery of mineral ores; declaration of dividends; executing a contract

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[26] Financial Securities and Markets Act of 2000, Part VIII (118)(2)(a).

[27] See Sec. 1, Com. Act No. 83 (1936).

[28] See Sec. 20, Com. Act No. 83 (1936).

[29] See Sec. 21, Com. Act No. 83 (1936).

[30] *Rules Requiring Disclosure of Material Facts by Corporations whose Securities are Listed in any Stock Exchange or Registered/Licensed Under the Revised Securities Act*, dated 29 January 1973.

[31] See R. MORALES, *The Philippine Securities Regulation Code* (Annotated) (2002 ed.) at 199.

of merger or consolidation; rights offering; and any other important event or happening."[32]

The enactment of the Revised Securities Act in 1980 (Batas Pambansa Blg. 178, as amended) provided for the first time a specific statutory prohibition in Philippine law against insider trading. This was embodied in Section 30 of the law, which provides:

> Sec. 30. Insider's duty to disclose when trading — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special signifinace with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise.
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> (b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider.
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> (c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.
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> (d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider.

Contrary to the claims of respondents, such terms as "material fact," "reasonable person," "nature and reliability" and "generally

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[32] *Id*.

available" as utilized in Section 30 do not suffer from the vice of vagueness and do not necessitate an administrative rule to supply definitions of the terms either. For example, as the *ponente* points out, the 1973 Rules already provided for a definition of a "material fact," a definition that was actually incorporated in Section 30.

Yet there is an underlying dangerous implication to respondents' arguments which makes the Court's rejection thereof even more laudable. The ability of the SEC to effectively regulate the securities market depends on the breadth of its discretion to undertake regulatory activities. The intractable adherents of *laissez-faire* absolutism may decry the fact that there exists an SEC in the first place, yet it is that body which assures the protection of interests of ordinary stockholders and investors in the capital markets, interests which may be overlooked by the issuers of securities and their corporate overseers whose own interests may not necessarily align with that of the investing public. A "free market" that is not a "fair market" is not truly free, even if left unshackled by the State as it would in fact be shackled by the uninhibited greed of only the largest players.

Respondents essentially contend that the SEC is precluded from enforcing its statutory powers unless it first translates the statute into a more comprehensive set of rules. Without denigrating the SEC's delegated rule-making power, each provision of the law already constitutes an executable command from the legislature. Any refusal on the part of the SEC to enforce the statute on the premise that it had yet to undergo the gauntlet of administrative interpretation is derelict to that body's legal mandate. By no means is the Congress impervious to the concern that certain statutory provisions are best enforced only after an administrative regulation implementing the same is promulgated. In such cases, the legislature is solicitous enough to specifically condition the enforcement of the statute upon the promulgation of the relevant administrative rules. Yet in cases where the legislature does not see fit to impose such a conditionality, the body tasked with enforcing the law has no choice but to do so. Any quibbling as to the precise meaning of the statutory language would be duly resolved through the exercise of judicial review.

It bears notice that unlike the American experience where the U.S. Congress has not seen fit to specifically legislate prohibitions on insider trading, relying instead on the discretion of the U.S. SEC to penalize such acts, our own legislature has proven to be more pro-active in that regard, legislating such prohibition, not once, but twice. The Revised Securities Act was later superseded by the Securities Regulation Code of 2000 (Rep. Act No. 8799), a law which is admittedly more precise and ambitious in its regulation of such activity. The passage of that law is praiseworthy insofar as it strengthens the State's commitment to combat insider trading. And the promulgation of this decision confirms that the judiciary will not hesitate in performing its part in seeing to it that our securities laws are properly implemented and enforced.

III

Now on the issue of prescription.

The issue boils down to the determination of whether the investigation conducted by the SEC pursuant to Section 45 [33] of the Revised Securities Act in 1994 tolled the running of the period of prescription. I submit it did.

Firstly, this Court, in ruling in *Baviera v. Paglinawan*[34] that the Department of Justice cannot conduct a preliminary investigation for the determination of probable cause for offenses under the Revised Securities Code, without an investigation first had by the SEC, essentially underscored that the exercise is a two-stage process. The procedure is similar to the two-phase preliminary investigation prior to the prosecution of a criminal case in court under the old rules.[35] The venerable J.B.L.

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[33] A similar provision is found in Section 53 of the Securities Regulation Code of 2008.

[34] G.R. No. 168380, 8 February 2007, 515 SCRA 515.

[35] The first phase was the preliminary examination for the determination of the fact of commission of the offense and the existence of probable cause, as well as the issuance of the warrant of arrest. The second phase was the preliminary investigation proper (after arrest, for the determination of whether

Reyes in *People v. Olarte*[36] finally settled a long standing jurisprudential conflict at the time by holding that **the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits**. The court gave three reasons in support of its decision, thus:

> . . . Several reasons buttress this conclusion: first the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do not on his part to initiate the prosecution is to file the requisite complaint.[37]

The same reasons which moved the Court in 1967 to declare that the mere filing of the complaint, whether for purposes of preliminary examination or preliminary investigation should interrupt the prescription of the criminal action inspire the Court's ruling in this case.

It should be emphasized that Sec. 45 of the Revised Securities Act invests the SEC with the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts

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there was a *prima facie* case against the accused and whether the issuance of the arrest warrant was justified).

[36] 125 Phil. 895 (1967).

[37] *Id*.

and circumstances concerning the matter to be investigated" and to refer criminal complaints for violations of the Act to the Department of Justice for preliminary investigation and prosecution before the proper court.

The SEC's investigatory powers are obviously akin to the preliminary examination stage mentioned in *People v. Olarte.* The SEC's investigation and determination that there was indeed a violation of the provisions of the Revised Securities Act would set the stage for any further proceedings, such as preliminary investigation, that may be conducted by the DOJ after the case is referred to it by the SEC.

Secondly, Sec. 2 of Act No. 3326[38] provides in part:

> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. **The prescription shall be interrupted when proceedings are instituted against the guilty person,** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

Act No. 3326 was approved on 4 December 1926, at a time that the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace. The prevailing rule at the time, embodied in the early case of *U.S. v. Lazada*[39] and later affirmed in *People v. Joson*,[40] is that the prescription of the offense is halted once the complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of criminal proceedings against the accused.[41] *People v. Parao*[42] — a case

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[38] Entitled "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATION PENALIZED BY SPECIAL ACTS AND MUNICIPALS ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO ACT."

[39] 9 Phil. 509 (1908).

[40] 46 Phil. 380.

[41] 9 Phil. 509, 511.

[42] 52 Phil. 712 (1929).

which affirmed the power of the then municipal president to conduct preliminary investigation in the absence of the justice of the peace and of the auxiliary justice of the peace when the same could not be deferred without prejudice to the interest of justice — established the correlative rule that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceedings which suspends the prescription of the offense.[43] But although the second *Olarte*[44] case made an affirmative ruling that the preliminary investigation is not part of the action proper, the Court therein nevertheless declared that such investigation is quasi-judicial in nature and that as such, the mere filing of the complaint with the justice of the peace should stall the exhaustion of the prescriptive period of the offense charged.

While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the modifier "judicial" should be taken to refer to the trial and judgment stage **only** and not to the earlier investigation phase. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution as provided by law shall suffice to toll prescription.

Thus, in the case at bar, the initiation of investigative proceedings against respondents, halted only by the injunctive orders issued by the Court of Appeals upon their application no less, should and did interrupt the period of prescription.

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[43] 52 Phil. 712, 715.

[44] G.R. No. L-22465, 28 February 1967.

DISSENTING OPINION

CARPIO, *J.*:

I dissent because the majority opinion is **patently contrary** to the express provision of Section 2 of Act No. 3326.

The majority opinion holds that the **administrative investigation** by the Securities and Exchange Commission (SEC) interrupted the running of the prescriptive period for violation of the Securities Regulation Code (Code). The majority opinion holds:

> x x x It should be noted that the SEC started investigative proceedings against the respondents as early as 1994. **This investigation effectively interrupted the prescriptive period**.
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> x x x x x x x x x
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> x x x **Thus, the investigation that was commenced by the SEC in 1995 (sic), soon after they discovered the questionable acts made by the respondents, effectively interrupted the prescriptive period**. (Emphasis supplied)

This ruling of the majority violates Section 2 of Act No. 3326 entitled *An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and To Provide When Prescription Shall Begin To Run*. Section 2 provides:

> Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the **institution of judicial proceedings for its investigation and punishment**. (Emphasis and underscoring supplied)

In *Zaldivia v. Reyes, Jr.*,[1] the Court ruled that the proceedings referred to in Section 2 of Act No. 3326 are **judicial proceedings and not administrative proceedings.** The Court held:

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[1] G.R. No. 102342, 3 July 1991, 211 SCRA 277.

x x x **This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.**

This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." **The proceedings referred to in Section 2 thereof are "judicial proceedings**," contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does. (Emphasis and underscoring supplied)

Indeed, Section 2 of Act No. 3326 expressly refers to the "**institution of judicial proceedings**." Contrary to the majority opinion's claim that "a preliminary investigation interrupts the prescriptive period," **only the institution of judicial proceedings can interrupt the running of the prescriptive period**. Thus, in the present case, since no criminal case was filed in any court against respondents since 1994 for violation of the Code, the prescriptive period of twelve years under Section 1[2] of Act No. 3326 has now expired.

The fact that the Court of Appeals enjoined the SEC from filing any criminal, civil or administrative case against respondents for violation of the Code is immaterial. The SEC has no jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code. Even if the Court of Appeals did not issue the injunction, the SEC could still not have instituted any judicial proceedings against respondents for criminal violation

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[2] Section 1 of Act No. 3326 provides: "Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) **after twelve years for any other offence punished by imprisonment for six years or more**, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months." (Emphasis supplied)

of the Code. The Code empowers the SEC to conduct **only administrative investigations and to impose fines and other administrative sanctions**[3] against violators of the Code. Section 54.2 of the Code states that the "imposition of x x x administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation."

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[3] Section 54 of the Securities Regulation Code provides: "Administrative Sanctions. — 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten thousand pesos (₱10,000.00) nor more than One million pesos (₱1,000,000.00) plus not more than Two thousand pesos (₱2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

54.2. The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

54.3. The Commission shall have the power to issue writs of execution to enforce the provisions of this Section and to enforce payment of the fees and other dues collectible under this Code.

Thus, the criminal charges may proceed separately and independently of the administrative proceedings.

Under Section 53.1 of the Code,[4] jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code **lies exclusively** with the Department of Justice (DOJ). Section 53.1 of the Code expressly states that "**all criminal complaints for violations of this Code** x x x **shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court**." No court ever enjoined the DOJ to institute judicial proceedings against respondents for criminal violation of the Code. Nothing prevented the DOJ's National Bureau of Investigation from investigating the alleged criminal violations of the Code by respondents. Thereafter, the DOJ could have conducted a preliminary investigation and instituted judicial proceedings against respondents. The DOJ did not and prescription has now set in.

Accordingly, I vote to *DISMISS* the petition.

FIRST DIVISION

[G.R. No. 156962. October 6, 2008]

VICTORIAS MILLING CO., INC., *petitioner, vs.* **LUIS J. PADILLA, EMMANUEL S. DUTERTE, CARLOS TUPAS, JR., and ROLANDO C. RODRIGUEZ,** *respondents.*

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[4] Section 53.1 of the Securities Regulation Code provides that "**all criminal complaints for violations of this Code**, and the implementing rules and regulations enforced or administered by the Commission **shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court**." Section 45 of the old Revised Securities Act contained substantially the same provision.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REGLEMENTARY PERIOD FOR FILING THEREOF, WHEN NOT VIOLATED. — Under Section 4 of Rule 65, the aggrieved party must file a petition for *certiorari* within 60 days from notice of the assailed judgment, resolution or order. As can be gleaned from the prayer of the petition for *certiorari*, petitioner was not only assailing the implied denial of its *ex-parte* motion during the scheduled arraignment on 3 July 2000. Petitioner was also challenging the legality of respondents' arraignment on specific informations only instead of on all the 64 informations. Since the arraignment of the three respondents was held on 3 July 2000, the 60-day period for filing a petition for *certiorari* questioning the legality of the arraignment may be reckoned from that date. Therefore, the petition for *certiorari* filed on 30 August 2000 was filed within the reglementary period. Considering that petitioner is also objecting to the arraignment of the respondents, then the attachment to the petition for *certiorari* of the 3 July 2000 orders of the MTCC Judge and the transcript of the stenographic notes taken on that date substantially complied with the requirement under the Rules.

2. ID.; ID.; ID.; PERSONALITY TO FILE A PETITION FOR *CERTIORARI*, ESTABLISHED IN CASE AT BAR. — Contrary to the view of the Court of Appeals, petitioner has the personality to file a petition for *certiorari* assailing the orders of the MTCC Judge. In *Paredes v. Gopengco*, which ruling was reiterated in *People v. Calo, Jr.*, the Court held that: The non-joinder of the People in the action was x x x but a formality, x x x and should not serve as a ground for dismissal of the action, by virtue of the provisions of Rule 3, Section 11, providing that "parties may be dropped or added by order of the Court on motion of any party or on its own initiative at any stage of the action and on such terms as are just." Furthermore, as offended party x x x, it cannot be gainsaid that respondents have sufficient interest and personality as "person(s) aggrieved" x x x to file the special civil action, under Sections 1 and 2 of Rule 65. Moreover, it is basic in criminal law that the civil case is impliedly included in the criminal case. Therefore, private complainant, petitioner in this case, has sufficient interest and personality in filing the petition for *certiorari*. x x x Further,

it is not yet necessary to prove that petitioner suffered damages on account of the falsification of the private documents in order for petitioner to have standing to file a petition for *certiorari*. Intent to cause damage is a sufficient allegation of damage for a charge of falsification of private documents.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; IF THE JUDGE FINDS NO PROBABLE CAUSE AGAINST THE RESPONDENT, HE SHALL DISMISS THE COMPLAINT OR INFORMATION; APPLICATION IN CASE AT BAR. — At the time of the filing of the informations, the applicable provision was Section 9, Rule 112 of the 1985 Rules on Criminal Procedure, which covers cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure. No preliminary investigation is required in such cases. In the course of the proceedings, Section 9 of Rule 112 was amended to read as follows: x x x Whether under the old or new provision, the Rules applicable to this case are substantially the same. The Rules essentially provide that **if the MTCC judge finds no probable cause against respondents, he shall dismiss the complaint or information.** Otherwise, he shall issue either warrants of arrest or summonses, depending on the necessity to place the accused under custody. At that stage of the proceedings, the MTCC Judge need not find proof beyond reasonable doubt of the existence of conspiracy. He must only satisfy himself whether there is probable cause or sufficient ground to hold each respondent for trial as a co-conspirator. It is obviously absurd for the MTCC Judge to require that conspiracy must be proved before conspiracy can be alleged in the informations. For the sake of the prosecution, which desires the punishment of the criminals liable for the falsifications, and for the benefit of the respondents, who will possibly face prosecution or conviction for the crimes charged, the MTCC Judge should properly and clearly resolve whether there is probable cause against each respondent as a co-conspirator for 64 counts of falsification of private documents. The summary nature of the procedure under the Rules does not dispense with such determination.

4. ID.; ID.; ID.; FINDING PROBABLE CAUSE AGAINST CONSPIRATORS, AMENDED; EXPLAINED. — As stated above, Section 9 of Rule 112 was amended. Since remedial

laws may be given retroactive effect, the Court orders the MTCC Judge to determine the existence of probable cause against respondents as conspirators for the crimes charged pursuant to the amended provision, specifically Section 8(b) of Rule 112 of the Revised Rules of Criminal Procedure. Accordingly, if the MTCC judge finds no probable cause against respondents as conspirators, he shall dismiss the informations against the non-conspirators. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the MTCC Judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the informations against the non-conspirators. If there exists probable cause against each respondent as a co-conspirator for 64 counts of falsification of private documents, then the MTCC Judge shall issue either warrants of arrest, in addition to the arrest warrants already issued, or summonses against respondents, depending on the necessity of placing the accused under custody. Thereafter, the MTCC Judge should arraign each respondent for 64 counts of falsification of private documents. Concerning the arraignment of the respondents, the same is not void. If ever, the eventual positive finding of the existence of probable cause against all respondents as conspirators will only mean additional indictments for respondents. This finding will not affect the arraignment of the respondents.

APPEARANCES OF COUNSEL

Diaz Maghari Magaspac Cuaycong and Associates and *Eva A. Vicencio-Rodriguez & Andrew T. Pandan* for petitioner.

De Borja Medialdea Bello Guevarra & Gerodias for E.S. Duterte.

Villareal Rosacia Diño and Patag for L.J. Padilla.

Quisumbing Fernando and Javellana Law Offices for R. Rodriguez

Salazar Flaminiano and Banzon for C. Tupas, Jr.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review assails the 13 June 2002 Decision[1] and the 22 January 2003 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 65895. The Court of Appeals dismissed the petition for *certiorari* filed by petitioner on the grounds of (1) lack of standing to prosecute the criminal cases for falsification of private documents against respondents; (2) failure to attach the assailed order in the petition for *certiorari* filed in the Regional Trial Court; and (3) late filing of the petition for *certiorari* in the Regional Trial Court.

The Facts

The present controversy stemmed from a single complaint for falsification of private documents filed by the Chief of Police[3] of the then Municipality of Victorias against respondents Luis J. Padilla (Padilla), Emmanuel S. Duterte (Duterte), Carlos Tupas, Jr. (Tupas), and Rolando C. Rodriguez (Rodriguez). Docketed as Criminal Case No. 8069-V, the complaint reads:

C O M P L A I N T

The undersigned, Station Commander, Victorias Police Station, PNP Victorias, Negros Occidental, hereby accuses **Luis J. Padilla, Emmanuel S. Duterte, Carlos Tupas, Jr. and Rolando C. Rodriguez** of the crime of Violation of Article 172 Paragraph 2 of the Revised Penal Code on Falsification of Private Documents committed as follows:

That **confederating, working and acting in conspiracy** with one another and with intent to cause damage to Victorias Milling

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[1] *Rollo*, pp. 746-755. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Teodoro P. Regino and Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 772-773.

[3] Senior Inspector Larry L. Decena.

Company (VMC), **Luis J. Padilla, Emmanuel S. Duterte, Carlos Tupas, Jr. and Rolando C. Rodriguez** on various dates and in various quantities during the period from 21 January 1992 to 02 December 1996 committed the crime of falsification of private documents in Victorias, Negros Occidental by **executing, issuing and signing RSDOs** (Refined Sugar Invoice/Delivery Orders) amounting to THREE MILLION ONE HUNDRED FORTY TWO THOUSAND SEVEN HUNDRED SIXTEEN (3,142,716) LKG, which are sugarless, and **executing, issuing and signing false certifications supporting the RSDOs without securing the authority of the board of directors of VMC**, as shown in Annex "A" hereof.

Acts contrary to Law.[4] (Emphasis supplied)

On 6 November 1998, upon Motions to Quash the Complaint filed by several of the respondents on the ground, among others, of duplicity of offenses, Municipal Trial Court in Cities Judge Ricardo S. Real, Sr. (MTCC Judge) dismissed the complaint and ordered the amendment of the complaint or the filing of another information.[5]

Accordingly, on 13 November 1998, upon the conversion of the Municipality of Victorias into a city,[6] City Prosecutor Adelaida R. Rendon filed sixty-four (64) Informations for falsification[7] against respondents,[8] alleging conspiracy among respondents in signing and using "sugarless" Refined Sugar Delivery Orders (RSDOs) as collateral to obtain loans from five banks[9] in the total amounts of US$15,274,956.40 and ₱692,322,644.86.

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[4] *Rollo*, p. 89.

[5] *Id.* at 99.

[6] Republic Act No. 8488 converted the Municipality of Victorias into a Component City of Negros Occidental and renamed it the City of Victorias (http://www.victoriascity.gov.ph/).

[7] Penalized by Article 172, in relation to Article 171, paragraph 4, of the Revised Penal Code.

[8] Docketed as Criminal Case Nos. 8130-V to 8193-V.

[9] Bank of the Philippine Islands, Metropolitan Bank & Trust Company, Dao Heng Bank, Asian Bank, and Land Bank of the Philippines.

The MTCC Judge approved the issuance of Warrants of Arrest against respondents only in the cases where they were the signatories of the sugarless RSDOs. Thus, warrants of arrest were issued against Padilla in 47 cases only, against Duterte in 10 cases only, against Tupas in 6 cases only, and against Rodriguez in 1 case only.

On 14 January 1999, the prosecution filed a Motion to Defer Arraignment,[10] praying for the issuance of 64 warrants of arrest against each respondent corresponding to the 64 informations for falsification in view of the charge of conspiracy.

In an Order of 7 April 1999,[11] the MTCC Judge denied the Motion to Defer Arraignment, ruling that conspiracy had to be proved by the prosecution and setting the cases for arraignment on 3 July 2000.

On 14 April 1999, the prosecution moved for reconsideration,[12] which the MTCC Judge denied in his Order of 24 November 1999.[13] This order reads:

> It must be stressed that although the affidavit of the prosecution is based on personal knowledge, the same were not yet introduced, authenticated, marked as exhibits and offered as evidence, consequently, it remained as a worthless piece of evidence to establish even the circumstantial evidence of conspiracy. During the preliminary investigation using the sworn statement of the prosecution as part thereof is only to determine that a probable cause exists that the crime as charged was committed and that all the accused were probably guilty thereof and there is a necessity to issue a warrant of arrest.
>
> The theory of the City Prosecutor of Victorias to issue Sixty Four (64) Warrants of Arrest to each accused as a result of the alleged conspiracy is baseless. Each accused is only liable for each RSDO's that they have signed since the dictum that the act of one is the act

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[10] *Rollo*, pp. 365-366.

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

[12] *Id.* at 384-390.

[13] *Id.* at 391-393.

of all no longer stand [*sic*]. The High Court speaking thru Justice Davide, Jr. states:

"Conspiracy, just like the crime itself, must be established by proof beyond reasonable doubt and the Rule has always been that co-conspirators are liable only for the acts done pursuant to the conspiracy, for other acts done outside the contemplation of the co-conspirators or which are not necessary and logical consequence of the intended crime, only the actual perpetrators are liable. In such a case, the dictum that the act of one is the act of all does not hold true anymore. *People versus Rodolfo Federico y Mediona* (G.R. No. 99840, August 14, 1995)."[14] (Underscoring in the original)

On 29 June 2000, the prosecution filed an Urgent *Ex-Parte* Motion[15] praying for an *ex-parte* hearing for the presentation of evidence on its allegation of conspiracy.

On 3 July 2000, during the scheduled arraignment, the MTCC Judge impliedly denied the *ex-parte* motion, stating in open court that it is a "mere scrap of paper"[16] and proceeded with the arraignment. Respondents, except Tupas, were arraigned only on specific informations where their signatures appeared in the RSDOs or certifications. Accordingly, Padilla pleaded not guilty to 46 cases,[17] Duterte pleaded not guilty to 10 cases, and Rodriguez pleaded not guilty to 1 case only. Tupas, through his counsel, requested a deferment of his arraignment.

On the same date, the MTCC Judge set the pre-trial of the case on 4 September 2000 and trial proper on 25 and 26 September, 23 and 24 October, and 27 and 28 November 2000. He also reset the arraignment of Tupas to 4 September 2000.

On 30 August 2000, petitioner filed with the Regional Trial Court (RTC) of Negros Occidental a petition for *certiorari* and *mandamus*, docketed as Civil Case Nos. 2133-40, against

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[14] *Id.* at 392.

[15] *Id.* at 394-396.

[16] *Id.* at 401.

[17] *Id.* at 410-413.

the MTCC Judge.[18] Petitioner prayed for the nullification of the arraignment of the three respondents and for the issuance of a writ of preliminary injunction to enjoin the MTCC Judge from further hearing the cases.

On 31 August 2000, the RTC issued an Order setting the date of the hearing for the preliminary injunction on 7 September 2000 and granting a temporary restraining order.[19]

On 29 September 2000, petitioner filed an Amended Petition attaching the 24 November 1999 Order of the MTCC Judge, which had been inadvertently omitted from the original Petition.

On 23 November 2000, the RTC issued an Order[20] denying the petition for *certiorari* and *mandamus* on three grounds: 1) petitioner has no standing to file the petition for *certiorari*; 2) the petition was incomplete in the narration of facts; and 3) the petition was filed beyond the prescribed period.

On 26 December 2000, petitioner filed a Motion for Reconsideration, which was denied in the 25 May 2001 Order of the RTC.[21]

On 1 August 2001, petitioner filed a petition for *certiorari* with the Court of Appeals challenging the 23 November 2000 and 25 May 2001 Orders of the RTC.

On 5 December 2001, the Court of Appeals issued a Resolution directing the issuance of a temporary restraining order.[22]

On 12 December 2001, the Office of the Solicitor General (OSG) filed a Manifestation and Motion (in Lieu of Comment)[23] asking that the People of the Philippines be removed as a party

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[18] *Id.* at 72-88.

[19] *Id.* at 462.

[20] *Id.* at 513-518.

[21] *Id.* at 548.

[22] *Id.* at 555-556.

[23] *Id.* at 718-719.

respondent and be excused from filing a comment to the petition considering that it was in conformity with the petition.

On 13 June 2002, the Court of Appeals rendered a Decision dismissing the petition.

On 1 July 2002, petitioner filed a Motion for Reconsideration, which was denied by the Court of Appeals on 22 January 2003.

Hence, this petition.

The Ruling of the Court of Appeals

In dismissing the petition for *certiorari*, the Court of Appeals ruled that petitioner has no personality to file the petition. The Court of Appeals stated that all criminal actions either commenced by complaint or by information should be prosecuted under the direction and control of the public prosecutor. In this case, petitioner did not even acquire the conformity of the public prosecutor before filing the petition. Petitioner was not also able to show that it suffered damages by reason of the alleged criminal act committed by respondents.

The Court of Appeals also found procedural lapses in petitioner's filing of the petition for *certiorari* before the RTC. Petitioner failed to attach the assailed orders to its petition and filed the petition beyond the reglementary period. The Court of Appeals opined that the 60-day period should start from the date of receipt of the 24 November 1999 Order, not from 3 July 2000 when the RTC impliedly denied the motion to conduct an *ex-parte* hearing. Hence, the RTC did not commit grave abuse of discretion in dismissing the petition for *certiorari*.

The Issues

Petitioner raises the following issues:

1. Whether the petition for *certiorari* was filed within the reglementary period;
2. Whether the petition for *certiorari* lacked the required vital documents;

3. Whether petitioner has a legal personality to file a petition for *certiorari*; and

4. Whether the issuance of a writ of *mandamus* directing the MTCC Judge to conduct an *ex-parte* hearing on the allegation of conspiracy is proper.

The Ruling of the Court

The petition is meritorious.

On the procedural issues

Petitioner contends that it seasonably filed on 30 August 2000 the petition for *certiorari* with the RTC considering that it "directly challenged the 3 July 2000 Orders issued by the MTCC," not the Orders dated 7 April 1999 and 24 November 1999. The prayer of the petition for *certiorari* filed in the RTC reads:

> WHEREFORE, it is respectfully prayed of this Honorable Court that, after hearing, judgment be rendered in favor of the petitioner and against the respondents, directing the issuance of the writs of *certiorari* and *mandamus*, **setting aside the arraignment of the three (3) accused for being null and void,** and directing respondent judge through the writ of *mandamus* to conduct first an *ex-parte* hearing to determine whether warrants of arrest (shall) issue against all the accused in all the criminal informations for falsification, with costs against the respondents.
>
> It is also prayed of this Honorable Court that after hearing, a writ of preliminary injunction be likewise issued **to enjoin respondent Judge from further hearing the cases below and arraigning the accused Carlos Tupas, Jr. until further orders from this Honorable Court**; that pending consideration of the issuance of the writ of preliminary injunction, a temporary restraining order be issued forthwith to the same effect.[24] (Emphasis supplied)

Under Section 4 of Rule 65,[25] the aggrieved party must file a petition for *certiorari* within 60 days from notice of the assailed judgment, resolution or order.

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[24] *Id.* at 85.

[25] SEC. 4. *Where petition filed.* The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be

As can be gleaned from the prayer of the petition for *certiorari*, petitioner was not only assailing the implied denial of its *ex-parte* motion during the scheduled arraignment on 3 July 2000. Petitioner was also challenging the legality of respondents' arraignment on specific informations only instead of on all the 64 informations. Since the arraignment of the three respondents was held on 3 July 2000, the 60-day period for filing a petition for *certiorari* questioning the legality of the arraignment may be reckoned from that date. Therefore, the petition for *certiorari* filed on 30 August 2000 was filed within the reglementary period. Considering that petitioner is also objecting to the arraignment of the respondents, then the attachment to the petition for *certiorari* of the 3 July 2000 orders of the MTCC Judge and the transcript of the stenographic notes taken on that date substantially complied with the requirement under the Rules.

On petitioner's personality to file a petition for certiorari

Contrary to the view of the Court of Appeals, petitioner has the personality to file a petition for *certiorari* assailing the orders of the MTCC Judge. In *Paredes v. Gopengco*,[26] which ruling was reiterated in *People v. Calo, Jr.*,[27] the Court held that:

The non-joinder of the People in the action was x x x but a formality, x x x and should not serve as a ground for dismissal of the action, by virtue of the provisions of Rule 3, Section 11, providing that "parties may be dropped or added by order of the Court on motion of any party or on its own initiative at any stage of the action and

assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

[26] 140 Phil. 81, 92-93 (1969).

[27] G.R. No. 88531, 18 June 1990, 186 SCRA 620. See *Mosquera v. Panganiban*, G.R. No. 121180, 5 July 1996, 258 SCRA 473, 479. See also *Padillo v. Apas*, G.R. No. 156615, 10 April 2006, 487 SCRA 29, 39, citing *Flores v. Joven*, G.R. No. 129874, 27 December 2002, 394 SCRA 339, 344.

on such terms as are just." Furthermore, as offended party x x x, it cannot be gainsaid that respondents have sufficient interest and personality as "person(s) aggrieved" x x x to file the special civil action, under Sections 1 and 2 of Rule 65.

Moreover, it is basic in criminal law that the civil case is impliedly included in the criminal case.[28] Therefore, private complainant, petitioner in this case, has sufficient interest and personality in filing the petition for *certiorari*.

At any rate, the OSG fully adopted petitioner's views, curing the perceived lack of standing on the part of petitioner to assail the 3 July 2000 orders of the MTCC Judge via a petition for *certiorari*. In its Manifestation and Motion (In Lieu of Comment) filed with the Court of Appeals, the OSG explicitly stated that:

> x x x it is in conformity with the instant petition [for *certiorari*], being on all fours with the Rules of Court and pertinent jurisprudence. Hence, it should be removed as party respondent, and excused from filing comment on the petition.[29]

In its Manifestation and Motion filed before this Court, the OSG reiterated its position that the petition for *certiorari* is correct.[30]

Further, it is not yet necessary to prove that petitioner suffered damages on account of the falsification of the private documents in order for petitioner to have standing to file a petition for *certiorari*. Intent to cause damage is a sufficient allegation of damage for a charge of falsification of private documents.[31]

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[28] Section 1, Rule 111 of the Rules of Court provides:

> When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. x x x

[29] *Rollo*, p. 718.

[30] *Id.* at 877.

[31] Aquino, Ramon C., *The Revised Penal Code*, Vol. II, 1997 Edition, p. 281. See also *Andaya v. People of the Philippines*, G.R. No. 168486, 27 June 2006, 493 SCRA 539.

On the MTCC Judge's failure to determine the existence of probable cause against respondents as conspirators in the crimes charged

The 64 separate informations filed with the Municipal Trial Court in Cities by City Prosecutor Adelaida R. Rendon uniformly charge Padilla, Duterte, Tupas, and Rodriguez of **conspiring** in the falsification of 64 private documents consisting of various RSDOs or certifications on different occasions with the intent to cause damage to petitioner. In effect, each respondent is charged, as a co-conspirator, with 64 counts of falsification of private documents.

At the time of the filing of the informations, the applicable provision was Section 9, Rule 112 of the 1985 Rules on Criminal Procedure, which covers cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.[32] No preliminary investigation is required in such cases.[33]

In the course of the proceedings, Section 9 of Rule 112 was amended to read as follows:

SEC. 8. ***Cases not requiring a preliminary investigation*** *nor covered by the Rule on Summary Procedure. —*

x x x x x x x x x

(b) If the complaint or information is filed with the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in Section 3(a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge **finds no probable cause** after personally evaluating the evidence, or after personally examining in writing

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[32] Falsification of private documents defined and penalized under Article 172(1) in relation to Article 171(4) of the Revised Penal Code carries with it an imposable penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000. See Batas Pambansa Blg. 129, as amended, otherwise known as "The Judiciary Reorganization Act of 1980."

[33] *Villanueva v. Almazan,* A.M. No. MTJ-99-1221, 16 March 2000, 328 SCRA 230. See also *Guillen v. Nicolas*, A.M. No. MTJ-98-1166, 4 December 1998, 299 SCRA 623.

and under oath the complainant and his witnesses in the form of searching questions and answers, he shall **dismiss the same**. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. **When he finds probable cause, he shall issue a warrant of arrest**, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is **no necessity for placing the accused under custody, he may issue summons** instead of a warrant of arrest. (Emphasis supplied)

Whether under the old or new provision, the Rules applicable to this case are substantially the same. The Rules essentially provide that **if the MTCC judge finds no probable cause against respondents, he shall dismiss the complaint or information.** Otherwise, he shall issue either warrants of arrest or summonses, depending on the necessity to place the accused under custody.

In the present case, Padilla, Duterte, Tupas, and Rodriguez are charged in each information as conspirators of falsifying 64 private documents. In other words, whether respondents signed the falsified documents or not, they are alleged to have conspired in making untruthful statements in such documents.

After the filing of the 64 informations for falsification of private documents by the City Prosecutor, the MTCC Judge proceeded to the issuance of warrants of arrest only against the signatories of the allegedly falsified documents and arraigned the same respondents against whom warrants of arrest were issued. The MTCC Judge opined that "each respondent is liable only for the RSDO that he signed," citing the case of *People v. Federico*, where this Court held that "conspiracy, just like the crime itself, must be established by proof beyond reasonable doubt." The MTCC Judge also stated that the prosecution's evidence is worthless for not being marked as exhibits and for not being authenticated.

The MTCC Judge is mistaken. He ruled out the existence of conspiracy based on a wrong ground. At that stage of the

proceedings, the MTCC Judge need not find proof beyond reasonable doubt of the existence of conspiracy. He must only satisfy himself whether there is probable cause or sufficient ground to hold each respondent for trial as a co-conspirator. It is obviously absurd for the MTCC Judge to require that conspiracy must be proved before conspiracy can be alleged in the informations.

For the sake of the prosecution, which desires the punishment of the criminals liable for the falsifications, and for the benefit of the respondents, who will possibly face prosecution or conviction for the crimes charged, the MTCC Judge should properly and clearly resolve whether there is probable cause against each respondent as a co-conspirator for 64 counts of falsification of private documents. The summary nature of the procedure under the Rules does not dispense with such determination.

As stated above, Section 9 of Rule 112 was amended. Since remedial laws may be given retroactive effect,[34] the Court orders the MTCC Judge to determine the existence of probable cause against respondents as conspirators for the crimes charged pursuant to the amended provision, specifically Section 8(b) of Rule 112 of the Revised Rules of Criminal Procedure. Accordingly, if the MTCC judge finds no probable cause against respondents as conspirators, he shall dismiss the informations against the non-conspirators. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the MTCC Judge still finds no probable cause despite the

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[34] *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, 28 February 2005, 452 SCRA 422, 434, citing *Republic v. Court of Appeals*, G.R. No. 141530, 18 March 2003, 399 SCRA 277, 284; *Universal Robina Corporation v. Court of Appeals*, G.R. No. 144978, 15 January 2002, 373 SCRA 311, 315; *Pfizer, Inc. v. Galan*, G.R. No. 143389, 25 May 2001, 358 SCRA 240, 246; *Unity Fishing Development Corp. v. Court of Appeals*, G.R. No. 145415, 2 February 2001, 351 SCRA 140, 143. See also *Queensland-Tokyo Commodities, Inc. v. Matsuda*, G.R. No. 159008, 23 January 2007, 512 SCRA 276, 281.

additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the informations against the non-conspirators. If there exists probable cause against each respondent as a co-conspirator for 64 counts of falsification of private documents, then the MTCC Judge shall issue either warrants of arrest, in addition to the arrest warrants already issued, or summonses against respondents, depending on the necessity of placing the accused under custody. Thereafter, the MTCC Judge should arraign each respondent for 64 counts of falsification of private documents.

Concerning the arraignment of the respondents, the same is not void. If ever, the eventual positive finding of the existence of probable cause against all respondents as conspirators will only mean additional indictments for respondents. This finding will not affect the arraignment of the respondents.

WHEREFORE, the Court *GRANTS* the petition. The Court orders Judge Ricardo S. Real, Sr. or the Presiding Judge of the Municipal Trial Court in Cities of Victorias City to determine whether there is probable cause against respondents as conspirators in the crime of falsification of 64 private documents defined and penalized under Article 172(1) in relation to Article 171(4) of the Revised Penal Code in accordance with the procedure in Section 8(b) of Rule 112 of the Revised Rules of Criminal Procedure.

SO ORDERED.

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

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[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

FIRST DIVISION

[G.R. No. 158997. October 6, 2008]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **YLLAS LENDING CORPORATION and JOSE S. LAURAYA, in his official capacity as President,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; PLEDGE; REQUISITES. — Articles 2085 and 2093 of the Civil Code enumerate the requisites essential to a contract of pledge: (1) the pledge is constituted to secure the fulfillment of a principal obligation; (2) the pledgor is the absolute owner of the thing pledged; (3) the persons constituting the pledge have the free disposal of their property or have legal authorization for the purpose; and (4) the thing pledged is placed in the possession of the creditor, or of a third person by common agreement. Article 2088 of the Civil Code prohibits the creditor from appropriating or disposing the things pledge, and any contrary stipulation is void.

2. ID.; ID.; SALES; *DATION EN PAGO*; DEFINED AND CONSTRUED. — On the other hand, Article 1245 of the Civil Code defines *dacion en pago*, or dation in payment, as the alienation of property to the creditor in satisfaction of a debt in money. *Dacion en pago* is governed by the law on sales. *Philippine National Bank v. Pineda* held that dation in payment requires delivery and transmission of ownership of a thing owned by the debtor to the creditor as an accepted equivalent of the performance of the obligation. There is no dation in payment when there is no transfer of ownership in the creditor's favor, as when the possession of the thing is merely given to the creditor by way of security.

3. ID.; ID.; LEASE; TERMINATION WITHOUT JUDICIAL INTERVENTION, PROPER. — A lease contract may be terminated without judicial intervention. *Consing v. Jamandre* upheld the validity of a contractually-stipulated termination clause: This stipulation is in the nature of a resolutory condition,

for upon the exercise by the [lessor] of his right to take possession of the leased property, the contract is deemed terminated. This kind of contractual stipulation is not illegal, there being nothing in the law proscribing such kind of agreement. x x x Judicial permission to cancel the agreement was not, therefore necessary because of the express stipulation in the contract of [leasse] that the [lessor], in case of failure of the [lessee] to comply with the terms and conditions thereof, can take-over the possession of the leased premises, thereby cancelling the contract of sub-lease. Resort to judicial action is necessary only in the absence of a special provision granting the power of cancellation.

4. ID.; ID.; ID.; FORFEITURE CLAUSE; VALIDITY THEREOF, UPHELD. — A lease contract may contain a forfeiture clause. *Country Bankers Insurance Corp. v. Court of Appeals* upheld the validity of a forfeiture clause as follows: A provision which calls for the forfeiture of the remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into. A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. In *Country Bankers*, we allowed the forfeiture of the lessee's advance deposit of lease payment. Such a deposit may also be construed as a guarantee of payment, and thus answerable for any unpaid rent or charges still outstanding at any termination of the lease. In the same manner, we allow FBDC's forfeiture of Tirreno's properties in the leased premises. By agreement between FBDC and Tirreno, the properties are answerable for any unpaid rent or charges at any termination of the lease. Such agreement is not contrary to law, morals, good customs, or public policy. Forfeiture of the properties is the only security that FBDC may apply in case of Tirreno's default in its obligatons.

5. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; THIRD PARTY CLAIM; WHEN ALLOWED. — The timing

of the filing of the third party claim is important because the timing determines the remedies that a third party is allowed to file. A third party claimant under Section 16 of Rule 39 (Execution, Satisfaction and Effect of Judgments) of the 1997 Rules of Civil Procedure may vindicate his claim to the property in a separate action, because intervention is no longer allowed as judgment has already been rendered. A third party claimant under Section 14 of Rule 57 (Preliminary Attachment) of the 1997 Rules of Civil Procedure, on the other hand, may vindicate his claim to the property by intervention because he has a legal interest in the matter in litigation. We allow FBDC's intervention in the present case because FBDC satisfied the requirements of Section 1, Rule 19 (Intervention) of the 1997 Rules of Civil Procedure, which reads as follows: Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the 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 custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. Although intervention is not mandatory, nothing in the Rules proscribes intervention. The trial court's objection against FBDC's intervention has been set aside by our ruling that Section 22 of the lease contract is not *pactum commissorium.*

6. ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; BOND REQUIREMENT; INDEMNITY BOND DISTINGUISHED FROM ATTACHMENT BOND. — Pursuant to Section 14 of Rule 57, the sheriff is not obligated to turn over to respondents the properties subject of this case in view of respondents' failure to file a bond. The bond in Section 14 of Rule 57 (proceedings where property is claimed by third person) is different from the bond in Section 3 of the same rule (affidavit and bond). Under Section 14 of Rule 57, the purpose of the bond is to indemnify the sheriff against any claim by the intervenor to the property seized or for damages arising from such seizure, which the sheriff was making and for which the sheriff was directly responsible to the third party. Section 3, Rule 57, on the other hand, refers to the attachment bond to assure the return of defendant's personal property or

the payment of damages to the defendant if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from destroying the same during the pendency of the suit. Because of the absence of the indemnity bond in the present case, FBDC may also hold the sheriff for damages for the taking or keeping of the properties seized from FBDC.

APPEARANCES OF COUNSEL

Batuhan Blando Concepcion Law Offices for petitioner.
Gaspar V. Tagalo for Yllas Lending Corp., *et al.*
Singson Valdez & Associates for Tirreno, Inc. *et al.*

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] of the Orders issued on 7 March 2003[2] and 3 July 2003[3] by Branch 59 of the Regional Trial Court of Makati City (trial court) in Civil Case No. 01-1452. The trial court's orders dismissed Fort Bonifacio Development Corporation's (FBDC) third party claim and denied FBDC's Motion to Intervene and Admit Complaint in Intervention.

The Facts

On 24 April 1998, FBDC executed a lease contract in favor of Tirreno, Inc. (Tirreno) over a unit at the Entertainment Center — Phase 1 of the Bonifacio Global City in Taguig, Metro Manila. The parties had the lease contract notarized on the day of its execution. Tirreno used the leased premises for Savoia Ristorante and La Strega Bar.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 49-52. Penned by Judge Winlove M. Dumayas.

[3] *Id.* at 53.

Two provisions in the lease contract are pertinent to the present case: Section 20, which is about the consequences in case of default of the lessee, and Section 22, which is about the lien on the properties of the lease. The pertinent portion of Section 20 reads:

Section 20. Default of the Lessee

20.1 The LESSEE shall be deemed to be in default within the meaning of this Contract in case:

(i) The LESSEE fails to fully pay on time any rental, utility and service charge or other financial obligation of the LESSEE under this Contract;

x x x x x x x x x

20.2 Without prejudice to any of the rights of the LESSOR under this Contract, in case of default of the LESSEE, the lessor shall have the right to:

(i) Terminate this Contract immediately upon written notice to the LESSEE, without need of any judicial action or declaration;

x x x x x x x x x

Section 22, on the other hand, reads:

Section 22. Lien on the Properties of the Lessee

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any, being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals, charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Tirreno began to default in its lease payments in 1999. By July 2000, Tirreno was already in arrears by ₱5,027,337.91. FBDC and Tirreno entered into a settlement agreement on 8

August 2000. Despite the execution of the settlement agreement, FBDC found need to send Tirreno a written notice of termination dated 19 September 2000 due to Tirreno's alleged failure to settle its outstanding obligations. On 29 September 2000, FBDC entered and occupied the leased premises. FBDC also appropriated the equipment and properties left by Tirreno pursuant to Section 22 of their Contract of Lease as partial payment for Tirreno's outstanding obligations. Tirreno filed an action for forcible entry against FBDC before the Municipal Trial Court of Taguig. Tirreno also filed a complaint for specific performance with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction against FBDC before the Regional Trial Court (RTC) of Pasig City. The RTC of Pasig City dismissed Tirreno's complaint for forum-shopping.

On 4 March 2002, Yllas Lending Corporation and Jose S. Lauraya, in his official capacity as President, (respondents) caused the sheriff of Branch 59 of the trial court to serve an *alias* writ of seizure against FBDC. On the same day, FBDC served on the sheriff an affidavit of title and third party claim. FBDC found out that on 27 September 2001, respondents filed a complaint for Foreclosure of Chattel Mortgage with Replevin, docketed as Civil Case No. 01-1452, against Tirreno, Eloisa Poblete Todaro (Eloisa), and Antonio D. Todaro (Antonio), in their personal and individual capacities, and in Eloisa's official capacity as President. In their complaint, respondents alleged that they lent a total of ₱1.5 million to Tirreno, Eloisa, and Antonio. On 9 November 2000, Tirreno, Eloisa and Antonio executed a Deed of Chattel Mortgage in favor of respondents as security for the loan. The following properties are covered by the Chattel Mortgage:

a. Furniture, Fixtures and Equipment of Savoia Ristorante and La Strega Bar, a restaurant owned and managed by [Tirreno], inclusive of the leasehold right of [Tirreno] over its rented building where [the] same is presently located.

b. Goodwill over the aforesaid restaurant, including its business name, business sign, logo, and any and all interest therein.

c. Eighteen (18) items of paintings made by Florentine Master, Gino Tili, which are fixtures in the above-named restaurant.

The details and descriptions of the above items are specified in Annex "A" which is hereto attached and forms as an integral part of this Chattel Mortgage instrument.[4]

In the Deed of Chattel Mortgage, Tirreno, Eloisa, and Antonio made the following warranties to respondents:

1. WARRANTIES: The MORTGAGOR hereby declares and warrants that:

a. The MORTGAGOR is the absolute owner of the above named properties subject of this mortgage, free from all liens and encumbrances.

b. There exist no transaction or documents affecting the same previously presented for, and/or pending transaction.[5]

Despite FBDC's service upon him of an affidavit of title and third party claim, the sheriff proceeded with the seizure of certain items from FBDC's premises. The sheriff's partial return indicated the seizure of the following items from FBDC:

A. FIXTURES
(2) – Smaller Murano Chandeliers
(1) – Main Murano Chandelier
B. EQUIPMENT
(13) – Uni-Air Split Type 2HP Air Cond.
(2) – Uni-Air Split Type 1HP Air Cond.
(3) – Uni-Air Window Type 2HP Air Cond.
(56) – Chairs
(1) – Table
(2) – boxes – Kitchen equipments [sic][6]

The sheriff delivered the seized properties to respondents. FBDC questioned the propriety of the seizure and delivery of the properties to respondents without an indemnity bond before

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[4] *Id.* at 100-101.

[5] *Id.* at 101.

[6] *Id.* at 121.

the trial court. FBDC argued that when respondents and Tirreno entered into the chattel mortgage agreement on 9 November 2000, Tirreno no longer owned the mortgaged properties as FBDC already enforced its lien on 29 September 2000.

In ruling on FBDC's motion for leave to intervene and to admit complaint in intervention, the trial court stated the facts as follows:

> Before this Court are two pending incidents, to wit: 1) [FBDC's] Third-Party Claim over the properties of [Tirreno] which were seized and delivered by the sheriff of this Court to [respondents]; and 2) FBDC's Motion to Intervene and to Admit Complaint in Intervention.
>
> Third party claimant, FBDC, anchors its claim over the subject properties on Sections 20.2(i) and 22 of the Contract of Lease executed by [FBDC] with Tirreno. Pursuant to said Contract of Lease, FBDC took possession of the leased premises and proceeded to sell to third parties the properties found therein and appropriated the proceeds thereof to pay the unpaid lease rentals of [Tirreno].
>
> FBDC, likewise filed a Motion to Admit its Complaint-in-Intervention.
>
> In Opposition to the third-party claim and the motion to intervene, [respondents] posit that the basis of [FBDC's] third party claim being anchored on the aforesaid Contract [of] Lease is baseless. [Respondents] contend that the stipulation of the contract of lease partakes of a pledge which is void under Article 2088 of the Civil Code for being pactum commissorium.
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> x x x x x x x x x
>
> By reason of the failure of [Tirreno] to pay its lease rental and fees due in the amount of ₱5,027,337.91, after having notified [Tirreno] of the termination of the lease, x x x FBDC took possession of [Tirreno.'s] properties found in the premises and sold those which were not of use to it. Meanwhile, [respondents], as mortgagee of said properties, filed an action for foreclosure of the chattel mortgage with replevin and caused the seizure of the same properties which [FBDC] took and appropriated in payment of [Tirreno's] unpaid lease rentals.[7]

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[7] *Id.* at 49-50.

The Ruling of the Trial Court

In its order dated 7 March 2003, the trial court stated that the present case raises the questions of who has a better right over the properties of Tirreno and whether FBDC has a right to intervene in respondents' complaint for foreclosure of chattel mortgage.

In deciding against FBDC, the trial court declared that Section 22 of the lease contract between FBDC and Tirreno is void under Article 2088 of the Civil Code.[8] The trial court stated that Section 22 of the lease contract pledges the properties found in the leased premises as security for the payment of the unpaid rentals. Moreover, Section 22 provides for the automatic appropriation of the properties owned by Tirreno in the event of its default in the payment of monthly rentals to FBDC. Since Section 22 is void, it cannot vest title of ownership over the seized properties. Therefore, FBDC cannot assert that its right is superior to respondents, who are the mortgagees of the disputed properties.

The trial court quoted from *Bayer Phils. v. Agana*[9] to justify its ruling that FBDC should have filed a separate complaint against respondents instead of filing a motion to intervene. The trial court quoted from *Bayer* as follows:

> In other words, construing Section 17 of Rule 39 of the Revised Rules of Court (now Section 16 of the 1997 Rules on Civil Procedure), the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented but in a separate and independent action instituted by the claimants.[10]

The dispositive portion of the trial court's decision reads:

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[8] Article 2088 provides that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

[9] 159 Phil. 955 (1975).

[10] *Rollo*, p. 52.

WHEREFORE, premises considered, [FBDC's] Third Party Claim is hereby DISMISSED. Likewise, the Motion to Intervene and Admit Complaint in Intervention is DENIED.[11]

FBDC filed a motion for reconsideration on 9 May 2003. The trial court denied FBDC's motion for reconsideration in an order dated 3 July 2003. FBDC filed the present petition before this Court to review pure questions of law.

The Issues

FBDC alleges that the trial court erred in the following:

1. Dismissing FBDC's third party claim upon the trial court's erroneous interpretation that FBDC has no right of ownership over the subject properties because Section 22 of the contract of lease is void for being a pledge and a *pactum commissorium*;
2. Denying FBDC intervention on the ground that its proper remedy as third party claimant over the subject properties is to file a separate action; and
3. Depriving FBDC of its properties without due process of law when the trial court erroneously dismissed FBDC's third party claim, denied FBDC's intervention, and did not require the posting of an indemnity bond for FBDC's protection.[12]

The Ruling of the Court

The petition has merit.

Taking of Lessee's Properties without Judicial Intervention

We reproduce Section 22 of the Lease Contract below for easy reference:

Section 22. Lien on the Properties of the Lessee

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any,

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[11] *Id*.

[12] *Id*. at 19.

being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals, charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Respondents, as well as the trial court, contend that Section 22 constitutes a *pactum commissorium*, a void stipulation in a pledge contract. FBDC, on the other hand, states that Section 22 is merely a *dacion en pago*.

Articles 2085 and 2093 of the Civil Code enumerate the requisites essential to a contract of pledge: (1) the pledge is constituted to secure the fulfillment of a principal obligation; (2) the pledgor is the absolute owner of the thing pledged; (3) the persons constituting the pledge have the free disposal of their property or have legal authorization for the purpose; and (4) the thing pledged is placed in the possession of the creditor, or of a third person by common agreement. Article 2088 of the Civil Code prohibits the creditor from appropriating or disposing the things pledged, and any contrary stipulation is void.

On the other hand, Article 1245 of the Civil Code defines *dacion en pago*, or dation in payment, as the alienation of property to the creditor in satisfaction of a debt in money. *Dacion en pago* is governed by the law on sales. *Philippine National Bank v. Pineda*[13] held that dation in payment requires delivery and transmission of ownership of a thing owned by the debtor to the creditor as an accepted equivalent of the performance of the obligation. There is no dation in payment when there is no transfer of ownership in the creditor's favor, as when the possession of the thing is merely given to the creditor by way of security.

Section 22, as worded, gives FBDC a means to collect payment from Tirreno in case of termination of the lease contract or the

[13] 274 Phil. 274 (1991).

expiration of the lease period and there are unpaid rentals, charges, or damages. The existence of a contract of pledge, however, does not arise just because FBDC has means of collecting past due rent from Tirreno other than direct payment. The trial court concluded that Section 22 constitutes a pledge because of the presence of the first three requisites of a pledge: Tirreno's properties in the leased premises secure Tirreno's lease payments; Tirreno is the absolute owner of the said properties; and the persons representing Tirreno have legal authority to constitute the pledge. **However, the fourth requisite, that the thing pledged is placed in the possession of the creditor, is absent.** There is non-compliance with the fourth requisite even if Tirreno's personal properties are found in FBDC's real property. Tirreno's personal properties are in FBDC's real property because of the Contract of Lease, which gives Tirreno possession of the personal properties. Since Section 22 is not a contract of pledge, there is no *pactum commissorium*.

FBDC admits that it took Tirreno's properties from the leased premises without judicial intervention after terminating the Contract of Lease in accordance with Section 20.2. FBDC further justifies its action by stating that Section 22 is a forfeiture clause in the Contract of Lease and that Section 22 gives FBDC a remedy against Tirreno's failure to comply with its obligations. FBDC claims that Section 22 authorizes FBDC to take whatever properties that Tirreno left to pay off Tirreno's obligations.

We agree with FBDC.

A lease contract may be terminated without judicial intervention. *Consing v. Jamandre* upheld the validity of a contractually-stipulated termination clause:

> This stipulation is in the nature of a resolutory condition, for upon the exercise by the [lessor] of his right to take possession of the leased property, the contract is deemed terminated. This kind of contractual stipulation is not illegal, there being nothing in the law proscribing such kind of agreement.
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> x x x x x x x x x

> Judicial permission to cancel the agreement was not, therefore necessary because of the express stipulation in the contract of [lease] that the [lessor], in case of failure of the [lessee] to comply with the terms and conditions thereof, can take-over the possession of the leased premises, thereby cancelling the contract of sub-lease. Resort to judicial action is necessary only in the absence of a special provision granting the power of cancellation.[14]

A lease contract may contain a forfeiture clause. *Country Bankers Insurance Corp. v. Court of Appeals* upheld the validity of a forfeiture clause as follows:

> A provision which calls for the forfeiture of the remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into. A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[15]

In *Country Bankers*, we allowed the forfeiture of the lessee's advance deposit of lease payment. Such a deposit may also be construed as a guarantee of payment, and thus answerable for any unpaid rent or charges still outstanding at any termination of the lease.

In the same manner, we allow FBDC's forfeiture of Tirreno's properties in the leased premises. By agreement between FBDC and Tirreno, the properties are answerable for any unpaid rent or charges at any termination of the lease. Such agreement is not contrary to law, morals, good customs, or public policy. Forfeiture of the properties is the only security that FBDC may apply in case of Tirreno's default in its obligations.

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[14] 159-A Phil. 291, 298 (1975).

[15] G.R. No. 85161, 9 September 1991, 201 SCRA 458, 464-465.

Intervention versus Separate Action

Respondents posit that the right to intervene, although permissible, is not an absolute right. Respondents agree with the trial court's ruling that FBDC's proper remedy is not intervention but the filing of a separate action. Moreover, respondents allege that FBDC was accorded by the trial court of the opportunity to defend its claim of ownership in court through pleadings and hearings set for the purpose. FBDC, on the other hand, insists that a third party claimant may vindicate his rights over properties taken in an action for replevin by intervening in the replevin action itself.

We agree with FBDC.

Both the trial court and respondents relied on our ruling in *Bayer Phils. v. Agana*[16] to justify their opposition to FBDC's intervention and to insist on FBDC's filing of a separate action. In *Bayer*, we declared that the rights of third party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented, but in a separate and independent action instituted by the claimants. However, both respondents and the trial court overlooked the circumstances behind the ruling in *Bayer*, which makes the *Bayer* ruling inapplicable to the present case. The third party in *Bayer* filed his claim during execution; in the present case, FBDC filed for intervention during the trial.

The timing of the filing of the third party claim is important because the timing determines the remedies that a third party is allowed to file. A third party claimant under Section 16 of Rule 39 (Execution, Satisfaction and Effect of Judgments)[17] of the

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[16] *Supra* note 9.

[17] *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify

1997 Rules of Civil Procedure may vindicate his claim to the property in a separate action, because intervention is no longer allowed as judgment has already been rendered. A third party claimant under Section 14 of Rule 57 (Preliminary Attachment)[18]

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the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[18] *Proceedings where property claimed by third person.* — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

of the 1997 Rules of Civil Procedure, on the other hand, may vindicate his claim to the property by intervention because he has a legal interest in the matter in litigation.[19]

We allow FBDC's intervention in the present case because FBDC satisfied the requirements of Section 1, Rule 19 (Intervention) of the 1997 Rules of Civil Procedure, which reads as follows:

> Section 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the 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 custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Although intervention is not mandatory, nothing in the Rules proscribes intervention. The trial court's objection against FBDC's intervention has been set aside by our ruling that Section 22 of the lease contract is not *pactum commissorium*.

Indeed, contrary to respondents' contentions, we ruled in *BA Finance Corporation v. Court of Appeals* that where the mortgagee's right to the possession of the specific property is evident, the action need only be maintained against the possessor of the property. However, where the mortgagee's right to possession is put to great doubt, as when a contending party

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When the writ of attachment is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff is sued for damages as a result of the attachment, he shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds appropriated for the purpose.

[19] Yllas Lending Corporation filed a complaint for Foreclosure of Chattel Mortgage with Replevin. However, Yllas Lending Corporation did not allege that it is the owner of the properties being claimed, which is a requirement in the issuance of a writ of replevin. Yllas Lending Corporation merely stated that it is Tirreno's chattel mortgagee.

might contest the legal bases for mortgagee's cause of action or an adverse and independent claim of ownership or right of possession is raised by the contending party, it could become essential to have other persons involved and accordingly impleaded for a complete determination and resolution of the controversy. Thus:

> A chattel mortgagee, unlike a pledgee, need not be in, nor entitled to, the possession of the property, unless and until the mortgagor defaults and the mortgagee thereupon seeks to foreclose thereon. Since the mortgagee's right of possession is conditioned upon the actual default which itself may be controverted, the inclusion of other parties, like the debtor or the mortgagor himself, may be required in order to allow a full and conclusive determination of the case. When the mortgagee seeks a replevin in order to effect the eventual foreclosure of the mortgage, it is not only the existence of, but also the mortgagor's default on, the chattel mortgage that, among other things, can properly uphold the right to replevy the property. The burden to establish a valid justification for that action lies with the plaintiff [-mortgagee]. **An adverse possessor, who is not the mortgagor, cannot just be deprived of his possession, let alone be bound by the terms of the chattel mortgage contract, simply because the mortgagee brings up an action for replevin.**[20] (Emphasis added)

FBDC exercised its lien to Tirreno's properties even before respondents and Tirreno executed their Deed of Chattel Mortgage. FBDC is adversely affected by the disposition of the properties seized by the sheriff. Moreover, FBDC's intervention in the present case will result in a complete adjudication of the issues brought about by Tirreno's creation of multiple liens on the same properties and subsequent default in its obligations.

Sheriff's Indemnity Bond

FBDC laments the failure of the trial court to require respondents to file an indemnity bond for FBDC's protection. The trial court, on the other hand, did not mention the indemnity bond in its Orders dated 7 March 2003 and 3 July 2003.

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[20] G.R. No. 102998, 5 July 1996, 258 SCRA 102, 113-114.

Pursuant to Section 14 of Rule 57, the sheriff is not obligated to turn over to respondents the properties subject of this case in view of respondents' failure to file a bond. The bond in Section 14 of Rule 57 (proceedings where property is claimed by third person) is different from the bond in Section 3 of the same rule (affidavit and bond). Under Section 14 of Rule 57, the purpose of the bond is to indemnify the sheriff against any claim by the intervenor to the property seized or for damages arising from such seizure, which the sheriff was making and for which the sheriff was directly responsible to the third party. Section 3, Rule 57, on the other hand, refers to the attachment bond to assure the return of defendant's personal property or the payment of damages to the defendant if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from destroying the same during the pendency of the suit.

Because of the absence of the indemnity bond in the present case, FBDC may also hold the sheriff for damages for the taking or keeping of the properties seized from FBDC.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Orders dated 7 March 2003 and 3 July 2003 of Branch 59 of the Regional Trial Court of Makati City in Civil Case No. 01-1452 dismissing Fort Bonifacio Development Corporation's Third Party Claim and denying Fort Bonifacio Development Corporation's Motion to Intervene and Admit Complaint in Intervention. We *REINSTATE* Fort Bonifacio Development Corporation's Third Party Claim and *GRANT* its Motion to Intervene and Admit Complaint in Intervention. Fort Bonifacio Development Corporation may hold the Sheriff liable for the seizure and delivery of the properties subject of this case because of the lack of an indemnity bond.

SO ORDERED.

Azcuna, Reyes,[*] and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J. (Chairperson), no part.

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

FIRST DIVISION

[G.R. No. 160338. October 6, 2008]

VENTIS MARITIME CORPORATION and BELSALLY SHIPPING, S.A., *petitioners, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION and AGAPITO C. AGONCILLO, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR ARBITER; FACTUAL FINDINGS THEREOF ARE CONCLUSIVE AND BINDING WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE. — The general rule is that factual findings of the labor officials are conclusive and binding when supported by substantial evidence. Substantial evidence means that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This Court will not uphold erroneous conclusions as when it finds insufficient or insubstantial evidence on record to support the factual findings, or when it is perceived that far too much is concluded, inferred, or deduced from the bare or incomplete facts appearing of record.

2. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; NOT PRESENT WHEN THE EMPLOYEE FAILED TO RETURN TO HIS WORK AS HE WAS NOT TERMINATED FROM HIS EMPLOYMENT; PRESENT IN CASE AT BAR. — The Labor Arbiter ruled that respondent was not illegally dismissed from employment. Instead, he failed to rejoin the vessel as per his agreement with the vessel's Master. The NLRC ruled otherwise, finding petitioners guilty of illegal dismissal. The Court of Appeals sustained the NLRC. We find that the findings of the Labor Arbiter are more in accord with the records of the case. In this case, respondent was not ordered to disembark. He was not repatriated. When MV Orchid Bridge docked in Manila, respondent asked for a leave of absence to attend to his wife who was then in the hospital. His disembarkation was out of the contract but it was guaranteed by Capt. Virgilio R. Aris and eventually allowed by the vessel's Master on the condition

> that he would return to the vessel on 2 July 1998. However, two days before his supposed return to the vessel, respondent informed Ventis that he could not rejoin the vessel because his wife was still in the hospital. In short, it was respondent who failed to return to his work. He was not terminated from his employment. x x x The Court notes that on 24 July 1998, 22 days after respondent was supposed to return but failed to join MV Orchid Bridge, Ventis filed a complaint before the POEA against respondent. On the other hand, respondent's complaint for illegal dismissal was filed only on 27 October 1998. Obviously, the filing of the illegal dismissal case was an afterthought on the part of respondent. The records show that the POEA case filed by Ventis was resolved against respondent. The POEA found respondent liable for abandonment of post and imposed upon him the penalty of suspension from participating in its overseas employment program for six months. The POEA decision became final and executory on 12 May 2005. Hence, there is no basis for the finding of the NLRC and the Court of Appeals that respondent did not abandon his work and was instead terminated from employment.

APPEARANCES OF COUNSEL

Marilyn P. Cacho & Associates for Ventis Maritime Corp.
Andres C. Villaruel, Jr. for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 30 June 2003 Decision[2] and 9 October 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 64391.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 21-31. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. and Edgardo P. Cruz, concurring.

[3] *Id.* at 33.

The Antecedent Facts

On 8 January 1998, Ventis Maritime Corporation (Ventis) hired Agapito C. Agoncillo, Jr. (respondent) as a Third Officer for its principal Belsally Shipping, S.A. (Belsally). Respondent was deployed on board MV Orchid Bridge (formerly MV Bangkok Bridge). Under the Employment Contract, respondent was entitled to a basic monthly salary of US$650, supervisory allowance of US$228 a month, subsistence allowance of US$33 a month, guaranteed overtime pay of US$484 a month, and vacation leave with pay of US$130. The contract period was for ten months.

On 24 June 1998, MV Orchid Bridge docked in the port of Manila. Respondent asked permission from the vessel's Master to allow him to visit his wife who was confined at the Seaman's Hospital in Manila for an operation. The vessel's Master allowed respondent to leave provided that he would rejoin the vessel when it returns to Singapore and Malaysia on 2 July 1998. Respondent obtained a cash advance of US$500 prior to his disembarkation. Two days before his scheduled return to the vessel, respondent informed Ventis that he could not leave his wife to rejoin the vessel. He was replaced by one Celino Dio. Respondent's wife was discharged from the hospital on 11 July 1998.

On 24 July 1998, Ventis filed a Complaint for Disciplinary Action against respondent before the Philippine Overseas Employment Agency (POEA). Ventis alleged that respondent committed a serious breach of contract and prayed, among others, for the cancellation of respondent's name from the POEA's Seaman's Book of Registry and for his permanent disqualification from the POEA's Overseas Program.

During the pendency of the case, respondent filed a complaint for illegal dismissal, non-payment of salaries, overtime pay, vacation pay, and other monetary claims before the Labor Arbiter against Ventis and Belsally (petitioners). Petitioners countered that respondent's act violated the Seaman's Oath of Undertaking which requires the employee to serve his employer at least a one-month notice before he terminates his contract.

The Ruling of the Labor Arbiter

In her 15 February 1999 Decision,[4] Labor Arbiter Ermita Abrasaldo- Cuyuca (Labor Arbiter) ruled, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Ventis Maritime Corporation and Belsally Shipping S.A. to pay complainant Agapito C. Agoncillo, Jr. the amount of US$767.84 representing his unpaid salary and other accrued benefits for the month of June 1998.
>
> Ten percent of the amount awarded as and for attorney's fees.
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.[5]

The Labor Arbiter ruled that respondent was not illegally dismissed from employment. The Labor Arbiter ruled that respondent admitted that he failed to finish his contract because he failed to rejoin the vessel as he had agreed with the vessel's Master. The Labor Arbiter ruled that as Third Officer and fourth in command of a vessel, respondent's duties and responsibilities could not just be delegated to any member of the crew. The Labor Arbiter ruled that respondent's separation from service was of his own doing. As such, he was not entitled to payment of his salaries for the unexpired portion of his contract or the three-month salary under Republic Act No. 8042.[6] The Labor Arbiter only awarded respondent's accrued benefits[7] until 24 June 1998.

Respondent appealed from the Labor Arbiter's Decision before the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

In its 21 June 2000 Decision,[8] the NLRC set aside the Labor Arbiter's Decision. The NLRC ruled that respondent did not

[4] CA *rollo*, pp. 36-42.

[5] *Id.* at 42.

[6] Migrant Workers and Overseas Filipinos Act of 1995.

[7] Supervisory allowance, subsistence allowance, overtime and vacation leave.

[8] CA *rollo*, pp. 24-34. Penned by Commissioner Vicente S.E. Veloso with Commissioner Alberto R. Quimpo, concurring.

abandon his work but sought the permission of the vessel's Master before disembarking. The NLRC ruled that respondent's acts were justified under the circumstances. The NLRC ruled that under the Collective Bargaining Agreement (CBA) between All Japan Seamen's Union/Associated Marine Officers and Seamen's Union of the Philippines and Taiyo Kabushi Kaisha represented by Ventis, respondent may take a leave of absence during his spouse's illness. The NLRC ruled that respondent's absence from 2 July 1998 until 11 July 1998 hardly constituted abandonment as to warrant his dismissal from the service. The NLRC ruled that before the vessel's departure on 2 July 1998, respondent already sent a message to the Master that he could not rejoin the vessel and recommended someone to take his place. The NLRC noted that respondent's clearance, given by the Japan Maritime Safety Agency and acknowledged by the ship's Master, stated that respondent would disembark for humanitarian reasons. The NLRC stated that respondent should also be allowed to extend his leave for humanitarian reasons. Finally, the NLRC ruled that respondent's dismissal was tainted with bad faith.

The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the appealed decision is set aside. Judgment is hereby rendered ordering respondents to jointly and severally pay:

1. complainant his salaries equivalent to the unexpired portion of his contract;
2. ₱50,000.00 as moral damages; and
3. Attorney's fee of 10% of the total award hereof.

The claim for exemplary damages is dismissed for lack of sufficient basis.

The claim for reinstatement or payment of separation pay is denied because based on the records, complainant is a contract worker with a fixed period of employment of ten (10) months.

SO ORDERED.[9]

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[9] *Id.* at 33-34.

Petitioners moved for reconsideration of the NLRC's Decision. In its 29 November 2000 Order,[10] the NLRC denied their motion.

Petitioners filed a petition for *certiorari* before the Court of Appeals.

The Ruling of the Court of Appeals

In its 30 June 2003 Decision, the Court of Appeals affirmed the NLRC's Decision. The Court of Appeals ruled that for a dismissal to be valid, two requirements must be met: the employee must be afforded due process, and the dismissal must be for a valid cause. The Court of Appeals sustained the NLRC's finding that respondent was dismissed without being informed of the cause of his dismissal and without being afforded the opportunity to present his side. The Court of Appeals likewise rejected petitioners' claim that respondent abandoned his post as Third Officer when he failed to return to the vessel on the agreed date. The Court of Appeals sustained the NLRC's finding that two days before he was expected to join the vessel, respondent informed the ship's Master that he could not rejoin the vessel and he recommended someone to take his place. The Court of Appeals further sustained the NLRC that petitioners should have allowed respondent to extend his leave for humanitarian reasons.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, this instant Petition for *Certiorari* with prayer for the issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order is hereby DENIED. The Decision of the National Labor Relations Commission dated June 21, 2000 in NLRC NCR CA No. 09699-99, is hereby AFFIRMED. Additionally, petitioners Ventis Maritime Corporation and Bel Sally Shipping, S.A. are directed to reimburse private respondent Agapito Agoncillo his placement fee with twelve percent (12%) interest per annum conformably with Sec. 10 of RA 8042.

SO ORDERED.[11]

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[10] *Id.* at 19-22. Penned by Commissioner Vicente S.E. Veloso with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

[11] *Rollo*, p. 31.

Petitioners filed a motion for reconsideration. In its 9 October 2003 Resolution, the Court of Appeals denied their motion.

Hence, the petition before this Court on the ground that the Court of Appeals committed a reversible error in disregarding the findings of the Labor Arbiter that respondent abandoned his post.

The Issue

The sole issue in this case is whether petitioners illegally dismissed respondent from employment.

The Ruling of this Court

The petition has merit.

Factual issues may be considered by this Court when the findings of fact and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals.[12] The general rule is that factual findings of the labor officials are conclusive and binding when supported by substantial evidence. Substantial evidence means that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[13] This Court will not uphold erroneous conclusions as when it finds insufficient or insubstantial evidence on record to support the factual findings, or when it is perceived that far too much is concluded, inferred, or deduced from the bare or incomplete facts appearing of record.[14]

The Labor Arbiter ruled that respondent was not illegally dismissed from employment. Instead, he failed to rejoin the vessel as per his agreement with the vessel's Master. The NLRC ruled otherwise, finding petitioners guilty of illegal dismissal. The Court of Appeals sustained the NLRC. We find that the

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[12] *PCL Shipping Philippines, Inc. v. NLRC*, G.R. No. 153031, 14 December 2006, 511 SCRA 44.

[13] *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[14] *Id*.

findings of the Labor Arbiter are more in accord with the records of the case.

In this case, respondent was not ordered to disembark. He was not repatriated. When MV Orchid Bridge docked in Manila, respondent asked for a leave of absence to attend to his wife who was then in the hospital. His disembarkation was out of the contract but it was guaranteed by Capt. Virgilio R. Aris and eventually allowed by the vessel's Master on the condition that he would return to the vessel on 2 July 1998. However, two days before his supposed return to the vessel, respondent informed Ventis that he could not rejoin the vessel because his wife was still in the hospital. In short, it was respondent who failed to return to his work. He was not terminated from his employment.

The Court of Appeals justified its ruling by citing the CBA between All Japan Seamen's Union/Associated Marine Officers and Seamen's Union of the Philippines and Taiyo Kabushi Kaisha which states:

> When the spouse or child, or in the case of a single man, a parent, dies or falls dangerously ill (and when the company can confirm it) whil[e] the seafarer is abroad, the company shall make every effort to repatriate the seafarer concerned as quickly as possible and pay for the repatriation if seafarer is repatriated.[15]

The Court of Appeals ruled that the CBA clearly afforded respondent to take a leave of absence during his wife's illness. However, in this case, respondent did not seek to extend his leave of absence. He did not try to use his emergency leave. Instead, he just informed Ventis that he would not be able to rejoin the vessel as scheduled. There was also no evidence on record to show that respondent's wife was dangerously ill that would warrant the application of the CBA. Respondent did not even claim that he had to take an extended leave because his wife was dangerously ill. Thus, the Court of Appeals erred in applying the CBA in this case.

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[15] *Rollo*, p. 40.

The Court of Appeals ruled that when his services were terminated, respondent immediately filed a complaint for illegal dismissal against petitioners. According to the Court of Appeals, respondent's act is contrary to the allegation of abandonment. The records state otherwise.

The Court notes that on 24 July 1998, 22 days after respondent was supposed to return but failed to join MV Orchid Bridge, Ventis filed a complaint before the POEA against respondent. On the other hand, respondent's complaint for illegal dismissal was filed only on 27 October 1998. Obviously, the filing of the illegal dismissal case was an afterthought on the part of respondent. The records show that the POEA case filed by Ventis was resolved against respondent. The POEA found respondent liable for abandonment of post and imposed upon him the penalty of suspension from participating in its overseas employment program for six months.[16] The POEA decision became final and executory on 12 May 2005.[17] Hence, there is no basis for the finding of the NLRC and the Court of Appeals that respondent did not abandon his work and was instead terminated from employment.

WHEREFORE, we *SET ASIDE* the 30 June 2003 Decision and 9 October 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 64391 affirming the 21 June 2000 Decision of the NLRC. We *REINSTATE* the 15 February 1999 Decision of the Labor Arbiter.

SO ORDERED.

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

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[16] *Id.* at 271.

[17] *Id.*

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

FIRST DIVISION

[G.R. No. 161219. October 6, 2008]

MARINDUQUE MINING AND INDUSTRIAL CORPORATION and INDUSTRIAL ENTERPRISES, INC., *petitioners, vs.* **COURT OF APPEALS and NATIONAL POWER CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; PERSONAL SERVICE IS THE GENERAL RULE; WHEN OTHER MODE OF SERVICE ALLOWED; CASE AT BAR. — Under Section 11, Rule 13 of the Rules, personal service of pleadings and other papers is the general rule while resort to the other modes of service and filing is the exception. When recourse is made to the other modes, a written explanation why service or filing was not done personally becomes indispensable. If no explanation is offered to justify resorting to the other modes, the discretionary power of the court to expunge the pleading comes into play. In *Solar Team Entertainment, Inc. v. Ricafort*, we ruled: We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. In this case, NAPOCOR complied with the Rules. NAPOCOR's notice of appeal sufficiently explained why the notice of appeal was served and filed by registered mail — due to lack of manpower to effect personal service. This explanation is acceptable for it satisfactorily

shows why personal service was not practicable. Moreover, the Court of Appeals correctly considered the importance of the issue involved in the case. Therefore, the Court of Appeals did not err when it ruled that the trial court acted with grave abuse of discretion in the issuance of the 15 May 2002 and 24 June 2002 Orders.

2. ID.; APPEALS; WHEN MULTIPLE APPEALS ALLOWED; RATIONALE. — No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules of Court so require. The reason for multiple appeals in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the trial court and held to be final. In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court. Jurisprudence recognizes the existence of multiple appeals in a complaint for expropriation because there are two stages in every action for expropriation. The first stage is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. **The order of expropriation may be appealed by any party by filing a record on appeal.** The second stage is concerned with the determination by the court of the just compensation for the property sought to be expropriated. A second and separate appeal may be taken from this order fixing the just compensation.

3. ID.; ID.; ISSUE NOT RAISED DURING THE TRIAL COULD NOT BE RAISED FOR THE FIRST TIME ON APPEAL. — It is settled that an issue not raised during the trial could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.

APPEARANCES OF COUNSEL

Eltanal Dalisay Paguio and Associates for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] seeks the reversal of the 27 February 2003 Decision[2] and 17 November 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 72402. In its 27 February 2003 Decision, the Court of Appeals set aside the 15 May 2002[4] and 24 June 2002[5] Orders of Judge Mamindiara P. Mangotara, Presiding Judge of the Regional Trial Court of Lanao del Norte, Branch 1, Iligan City (trial court), and ordered the trial court to give due course to respondent National Power Corporation's (NAPOCOR) appeal. In its 17 November 2003 Resolution, the Court of Appeals denied the motion for reconsideration of petitioners Marinduque Mining and Industrial Corporation and Industrial Enterprises, Inc. (petitioners).

The Facts

On 1 June 1999, NAPOCOR filed a complaint[6] for expropriation against petitioners for the construction of the AGUS VI Kauswagan 69 KV Transmission Line Project. NAPOCOR sought to expropriate 7,875 square meters of petitioners' property covered by Transfer Certificate of Title Nos. T-955 and T-956.[7]

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 31-37. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Teodoro P. Regino and Mariano C. del Castillo concurring.

[3] *Id.* at 39.

[4] *Id.* at 67-68.

[5] *Id.* at 69.

[6] CA *rollo*, pp. 28-33.

[7] Transfer Certificate of Title No. T-955 covers a total of 87,465 square meters, with 2,550 square meters included in the area sought to be expropriated. Transfer Certificate of Title No. T-956 covers a total of 152,147 square meters, with 5,325 square meters included in the area sought to be expropriated.

Petitioners filed their answer[8] with counterclaim and alleged that the expropriation should cover not only 7,875 square meters but the entire parcel of land. Petitioners claimed that the expropriation would render the remaining portion of their property valueless and unfit for whatever purpose.

In its 5 December 2001 Decision,[9] the trial court fixed the fair market value of the 7,875-square meter lot at ₱115 per square meter.[10] The trial court also directed the commissioners to submit a report and determine the fair market value of the "dangling area," consisting of 58,484 square meters, affected by the installation of NAPOCOR's transmission lines.

NAPOCOR filed a motion for reconsideration. In its Order dated 4 February 2002,[11] the trial court denied NAPOCOR's motion.

In its 19 March 2002 Supplemental Decision,[12] the trial court declared that the "dangling area" consisted of 48,848.87 square meters and fixed its fair market value at ₱65 per square meter. The trial court ruled that petitioners are entitled to consequential damages because NAPOCOR's expropriation impaired the value of the "dangling area" and deprived petitioners of the ordinary use of their property.

NAPOCOR filed a motion for reconsideration. In its Order dated 24 June 2002,[13] the trial court denied the motion for being moot and academic because on 2 April 2002, NAPOCOR

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[8] CA *rollo*, pp. 34-38.

[9] *Rollo*, pp. 49-58.

[10] The Commissioner's Report dated 18 September 2001 recommended that the 7,875-square meter lot had a fair market value of ₱106 per square meter.

[11] *Rollo*, p. 59.

[12] CA *rollo*, pp. 70-72. The Commissioner's Report dated 11 February 2002 recommended that the 58,484.275-square meter "dangling area" had a fair market value of ₱90 per square meter.

[13] *Id.* at 27.

filed a Notice of Appeal[14] of the 19 March 2002 Supplemental Decision.

On the other hand, petitioners moved for the execution of the trial court's 5 December 2001 Decision and 19 March 2002 Supplemental Decision. In its 26 April 2002 Order, the trial court partially granted petitioners' motion and, on 2 May 2002, issued the writ of execution for the 5 December 2001 Decision.

On 29 April 2002, petitioners filed a "motion to strike out or declare as not filed the notice of appeal dated April 2, 2002; to declare the supplemental decision as final and executory; and to issue the corresponding writ of execution thereon." Petitioners argued that NAPOCOR violated Section 11, Rule 13[15] of the Rules of Court because NAPOCOR filed and served the notice of appeal by registered mail. According to petitioners, NAPOCOR had all the vehicles and manpower to personally serve and file the notice of appeal.

NAPOCOR opposed petitioners' motion and alleged that its legal office is "severely undermanned" with only one vehicle and one employee, acting as secretary, handling 300 active cases in Mindanao. NAPOCOR also added that it was highly irregular for petitioners to question its mode of service and filing only at this stage of the proceedings because since the inception of the case, NAPOCOR had resorted to registered mail instead of personal service.

In its 15 May 2002 Order, the trial court granted petitioners' motion and denied NAPOCOR's notice of appeal. The trial court gave more credence to petitioners' allegations and declared that NAPOCOR's explanation was a "patent violation" of the

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[14] *Id.* at 74.

[15] Section 11, Rule 13 of the Rules of Court provides:

SEC. 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Rules. The trial court considered the notice of appeal as not filed at all and, since the period of appeal had already expired, declared its 19 March 2002 Supplemental Decision final and executory.

NAPOCOR filed a motion for reconsideration.[16] In its 24 June 2002 Order, the trial court denied NAPOCOR's motion.

On 23 August 2002, NAPOCOR filed a special civil action for *certiorari* with a prayer for a temporary restraining order before the Court of Appeals. NAPOCOR argued that the trial court acted without or in excess of jurisdiction and gravely abused its discretion when it denied NAPOCOR's notice of appeal of the 19 March 2002 Supplemental Decision on the sole ground that it was not filed and served personally.

The Ruling of the Court of Appeals

In its 27 February 2003 Decision, the Court of Appeals ruled in NAPOCOR's favor and set aside the trial court's 15 May 2002 and 24 June 2002 Orders. The Court of Appeals also ordered the trial court to give due course to NAPOCOR's appeal. The Court of Appeals declared that the trial court acted whimsically and capriciously when it denied the notice of appeal and declared the 19 March 2002 Supplemental Decision final and executory. The Court of Appeals noted that service by registered mail was previously resorted to by both parties and yet, this was the first time petitioners questioned NAPOCOR's mode of service. The Court of Appeals added that the trial court should have given due course to NAPOCOR's appeal because of the large amount of public funds involved considering the significant disparity between the area sought to be expropriated and the "dangling area." The Court of Appeals also said that the Rules should be liberally construed to effect substantial justice.

Petitioners filed a motion for reconsideration. In its 17 November 2003 Resolution, the Court of Appeals denied petitioners' motion.

Hence, this petition.

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[16] CA *rollo*, pp. 90-92.

The Issues

Petitioners raise the following issues:

1. Whether the Court of Appeals erred in ruling that the trial court's issuance of the 15 May 2002 and 24 June 2002 Orders was attended with grave abuse of discretion amounting to lack of jurisdiction; and
2. Whether the Court of Appeals erred in ruling that the 19 March 2002 Supplemental Decision is not final and executory.

The Ruling of the Court

The petition has no merit.

On NAPOCOR's failure to comply with Section 11, Rule 13 of the Rules of Court

Petitioners maintain that the trial court had the "wide latitude of discretion" to consider the notice of appeal as not filed at all because NAPOCOR failed to comply with the Rules.

On the other hand, NAPOCOR argues that the Rules allow resort to other modes of service and filing as long as the pleading was accompanied by a written explanation why service or filing was not done personally. NAPOCOR maintains that it complied with the Rules because the notice of appeal contained an explanation why NAPOCOR resorted to service and filing by registered mail — due to lack of manpower to effect personal service.[17] NAPOCOR also insists that petitioners are estopped from questioning its mode of service and filing because since the inception of the case, NAPOCOR had resorted to registered mail and yet, petitioners only raised this issue when the notice of appeal was filed.

Under Section 11, Rule 13 of the Rules, personal service of pleadings and other papers is the general rule while resort to the other modes of service and filing is the exception. When recourse is made to the other modes, a written explanation why

[17] *Id.* at 74.

service or filing was not done personally becomes indispensable.[18] If no explanation is offered to justify resorting to the other modes, the discretionary power of the court to expunge the pleading comes into play.[19]

In *Solar Team Entertainment, Inc. v. Ricafort*,[20] we ruled:

> We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11.[21]

In this case, NAPOCOR complied with the Rules. NAPOCOR's notice of appeal sufficiently explained why the notice of appeal was served and filed by registered mail – due to lack of manpower to effect personal service. This explanation is acceptable for it satisfactorily shows why personal service was not practicable.[22] Moreover, the Court of Appeals correctly considered the importance of the issue involved in the case. Therefore, the Court of Appeals did not err when it ruled that the trial court acted with grave abuse of discretion in the issuance of the 15 May 2002 and 24 June 2002 Orders.

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[18] *Marohomsalic v. Cole*, G.R. No. 169918, 27 February 2008, 547 SCRA 98.

[19] See *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers*, G.R. No. 141117, 25 March 2004, 426 SCRA 329 and *Zulueta v. Asia Brewery, Inc.*, 406 Phil. 543 (2001).

[20] 355 Phil. 404 (1998).

[21] *Id.* at 413-414.

[22] See *Public Estates Authority v. Judge Caoibes, Jr.*, 371 Phil. 688 (1999).

On NAPOCOR's failure to file a record on appeal

Petitioners maintain that NAPOCOR's appeal should be dismissed because NAPOCOR failed to file a record on appeal and consequently, it failed to comply with the material data rule.[23]

NAPOCOR argues that in this case the filing of a record on appeal is "superfluous" because the trial court had nothing else to resolve as the 19 March 2002 Supplemental Decision finally disposed of the case. Moreover, NAPOCOR states that petitioners only raised this issue in petitioners' comment before the Court of Appeals.

No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules of Court so require.[24] The reason for multiple appeals in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the trial court and held to be final.[25] In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court.

Jurisprudence recognizes the existence of multiple appeals in a complaint for expropriation because there are two stages in every action for expropriation.[26] The first stage is concerned

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[23] Section 1(a), Rule 50 of the Rules of Court provides:

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:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules.

[24] RULES OF COURT, Rule 41, Sec. 2(a).

[25] *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. No. 111324, 5 July 1996, 258 SCRA 186.

[26] *Municipality of Biñan v. Garcia*, G.R. No. 69260, 22 December 1989, 180 SCRA 576.

with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit.[27] **The order of expropriation may be appealed by any party by filing a record on appeal.**[28] The second stage is concerned with the determination by the court of the just compensation for the property sought to be expropriated.[29] A second and separate appeal may be taken from this order fixing the just compensation.[30]

In this case, since the trial court fully and finally resolved all conceivable issues in the complaint for expropriation, there was no need for NAPOCOR to file a record on appeal. In its 5 December 2001 Decision, the trial court already determined NAPOCOR's authority to exercise the power of eminent domain and fixed the just compensation for the property sought to be expropriated. NAPOCOR filed a motion for reconsideration. But after the trial court denied the motion, NAPOCOR did not appeal the decision anymore. Then, in its 19 March 2002 Supplemental Decision, the trial court fixed the just compensation for the "dangling area." NAPOCOR filed a motion for reconsideration and the trial court denied the motion. NAPOCOR then filed a notice of appeal. At this stage, the trial court had no more issues to resolve and there was no reason why the original records of the case must remain with the trial court. Therefore, there was no need for NAPOCOR to file a record on appeal because the original records could already be sent to the appellate court.

Moreover, petitioners did not raise this issue in their "motion to strike out or declare as not filed the notice of appeal dated April 2, 2002; to declare the supplemental decision as final and executory; and to issue the corresponding writ of execution thereon" before the trial court. It is settled that an issue not raised during the trial could not be raised for the first time on

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[27] *Id*.

[28] *Tan v. Republic*, G.R. No. 170740, 25 May 2007, 523 SCRA 203.

[29] *Municipality of Biñan v. Garcia*, *supra* note 26.

[30] *Tan v. Republic*, *supra*.

appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[31]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 27 February 2003 Decision and 17 November 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 72402.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166408. October 6, 2008]

QUEZON CITY and THE CITY TREASURER OF QUEZON CITY, *petitioners, vs.* **ABS-CBN BROADCASTING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF APPEAL BY THE COURT OF APPEALS IS PROPER BECAUSE IT RAISED PURELY LEGAL ISSUES; SUSTAINED. — Obviously, these are purely legal questions, cognizable by this Court, to the exclusion of all other courts. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. Section 2, Rule 50 of the Rules of Court provides that an appeal taken to the CA under Rule 41 raising only questions of law is erroneous and shall be dismissed, issues of pure law not being within its

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[31] *Victorias Milling Co., Inc. v. Court of Appeals*, 389 Phil. 184 (2000).

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

jurisdiction. Consequently, the dismissal by the CA of petitioners' appeal was in order.

2. TAXATION; INHERENT POWER TO TAX; THE POWER OF CONGRESS TO GRANT EXEMPTIONS IS SUPERIOR TO THE LOCAL GOVERNMENT'S DELEGATED POWER TO TAX. — Congress has the inherent power to tax, which includes the power to grant tax exemptions. On the other hand, the power of Quezon City to tax is prescribed by Section 151 in relation to Section 137 of the LGC which expressly provides that notwithstanding any exemption granted by any law or other special law, the City may impose a franchise tax. It must be noted that Section 137 of the LGC does not prohibit grant of future exemptions. As earlier discussed, this Court in *City Government of Quezon City v. Bayan Telecommunications, Inc.* sustained the power of Congress to grant tax exemptions over and above the power of the local government's delegated power to tax.

3. ID.; TAXES; TAX EXEMPTION; THE INTENTION TO MAKE AN EXEMPTION MUST BE EXPRESSED IN CLEAR AND UNAMBIGUOUS TERMS; RATIONALE. — Taxes are what civilized people pay for civilized society. They are the lifeblood of the nation. Thus, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed. The basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers. He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt. In other

words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms. x x x As adverted to earlier, the right to exemption from local franchise tax must be clearly established and cannot be made out of inference or implications but must be laid beyond reasonable doubt. Verily, the uncertainty in the "in lieu of all taxes" provision should be construed against ABS-CBN. ABS-CBN has the burden to prove that it is in fact covered by the exemption so claimed. ABS-CBN miserably failed in this regard. Too, the franchise failed to specify the taxing authority from whose jurisdiction the taxing power is withheld, whether municipal, provincial, or national. In fine, since ABS-CBN failed to justify its claim for exemption from local franchise tax, by a grant expressed in terms "too plain to be mistaken" its claim for exemption for local franchise tax must fail.

4. ID.; ID.; VALUE ADDED TAX AND FRANCHISE TAX, DISTINGUISHED. — VAT is a percentage tax imposed on any person whether or not a franchise grantee, who in the course of trade or business, sells, barters, exchanges, leases, goods or properties, renders services. It is also levied on every importation of goods whether or not in the course of trade or business. The tax base of the VAT is limited only to the value added to such goods, properties, or services by the seller, transferor or lessor. Further, the VAT is an indirect tax and can be passed on to the buyer. The franchise tax, on the other hand, is a percentage tax imposed only on franchise holders. It is imposed under Section 119 of the Tax Code and is a direct liability of the franchise grantee.

APPEARANCES OF COUNSEL

The City Attorney (Quezon City) for petitioners.
Quiason Makalintal Barot Torres & Ibarra for respondent.

D E C I S I O N

REYES, R.T., *J.*:

CLAIMS for tax exemption must be based on language in law too plain to be mistaken. It cannot be made out of inference or implication.

The principle is relevant in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) and that[2] of the Regional Trial Court (RTC) ordering the refund and declaring invalid the imposition and collection of local franchise tax by the City Treasurer of Quezon City on ABS-CBN Broadcasting Corporation (ABS-CBN).

The Facts

Petitioner City Government of Quezon City is a local government unit duly organized and existing by virtue of Republic Act (R.A.) No. 537, otherwise known as the Revised Charter of Quezon City. Petitioner City Treasurer of Quezon City is primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of Quezon City.

Under Section 31, Article 13 of the Quezon City Revenue Code of 1993,[3] a franchise tax was imposed on businesses operating within its jurisdiction. The provision states:

> Section 31. *Imposition of Tax*. — Any provision of special laws or grant of tax exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise whether issued by the national government or local government and, doing business in Quezon City, shall pay a franchise tax at the rate of ten percent (10%) of one percent (1%) for 1993-1994, twenty percent (20%) of one percent (1%) for 1995, and thirty percent (30%) of one percent (1%) for 1996 and the succeeding years thereafter, of gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year.

On May 3, 1995, ABS-CBN was granted the franchise to install and operate radio and television broadcasting stations in

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[1] *Rollo*, pp. 56-67. Dated August 31, 2004. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Romeo A. Brawner and Mariano C. Del Castillo, concurring.

[2] *Id.* at 46-54. Dated January 20, 1999. Penned by then Judge, now CA Associate Justice, Lucas P. Bersamin.

[3] Quezon City Ordinance No. SP-91, S-93.

the Philippines under R.A. No. 7966.[4] Section 8 of R.A. No. 7966 provides the tax liabilities of ABS-CBN which reads:

> Section 8. *Tax Provisions*. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, **shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns, and the said percentage tax shall be in lieu of all taxes on this franchise or earnings thereof;** Provided that the grantee, its successors or assigns shall continue to be liable for income taxes under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. (Emphasis added)

ABS-CBN had been paying local franchise tax imposed by Quezon City. However, in view of the above provision in R.A. No. 9766 that it "shall pay a franchise tax x x x in lieu of all taxes," the corporation developed the opinion that it is not liable to pay the local franchise tax imposed by Quezon City. Consequently, ABS-CBN paid under protest the local franchise tax imposed by Quezon City on the dates, in the amounts and under the official receipts as follows:

O.R. No.	Date	Amount Paid
2464274	07-18-95	₱ 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	2,731,135.81
Total		₱19,944,672.66[5]

[4] "An Act Granting the ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes." Enacted on March 30, 1995 and date of effectivity on May 3, 1995.

[5] *Rollo,* p. 17.

On January 29, 1997, ABS-CBN filed a written claim for refund for local franchise tax paid to Quezon City for 1996 and for the first quarter of 1997 in the total amount of Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (₱14,233,582.29) broken down as follows:

O.R. No	Date	Amount Paid
2536134	1-22-96	₱ 2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
Total		₱14,233,582.29[6]

In a letter dated March 3, 1997 to the Quezon City Treasurer, ABS-CBN reiterated its claim for refund of local franchise taxes paid.

On June 25, 1997, for failure to obtain any response from the Quezon City Treasurer, ABS-CBN filed a complaint before the RTC in Quezon City seeking the declaration of nullity of the imposition of local franchise tax by the City Government of Quezon City for being unconstitutional. It likewise prayed for the refund of local franchise tax in the amount of Nineteen Million Nine Hundred Forty-Four Thousand Six Hundred Seventy-Two and 66/100 centavos (₱19,944,672.66) broken down as follows:

O.R. No.	Date	Amount Paid
2464274	7-18-95	₱ 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	2,731,135.81
Total		₱19,944,672.66[7]

Quezon City argued that the "in lieu of all taxes" provision in R.A. No. 9766 could not have been intended to prevail over

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[6] *Id.*

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

a constitutional mandate which ensures the viability and self-sufficiency of local government units. Further, that taxes collectible by and payable to the local government were distinct from taxes collectible by and payable to the national government, considering that the Constitution specifically declared that the taxes imposed by local government units "shall accrue exclusively to the local governments." Lastly, the City contended that the exemption claimed by ABS-CBN under R.A. No. 7966 was withdrawn by Congress when the Local Government Code (LGC) was passed.[8] Section 193 of the LGC provides:

> Section 193. *Withdrawal of Tax Exemption Privileges*. — Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations**, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn** upon the effectivity of this Code. (Emphasis added)

On August 13, 1997, ABS-CBN filed a supplemental complaint adding to its claim for refund the local franchise tax paid for the third quarter of 1997 in the amount of Two Million Seven Hundred Thirty-One Thousand One Hundred Thirty-Five and 81/100 centavos (₱2,731,135.81) and of other amounts of local franchise tax as may have been and will be paid by ABS-CBN until the resolution of the case.

Quezon City insisted that the claim for refund must fail because of the absence of a prior written claim for it.

RTC and CA Dispositions

On January 20, 1999, the RTC rendered judgment declaring as invalid the imposition on and collection from ABS-CBN of local franchise tax paid pursuant to Quezon City Ordinance No. SP-91, S-93, after the enactment of R.A. No. 7966, and ordered the refund of all payments made. The dispositive portion of the RTC decision reads:

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[8] *Id.* at 46-60.

WHEREFORE, judgment is hereby rendered declaring the imposition on and collection from plaintiff ABS-CBN BROADCASTING CORPORATION of local franchise taxes pursuant to Quezon City Ordinance No. SP-91, S-93 after the enactment of Republic Act No. 7966 to be invalid, and, accordingly, the Court hereby orders the defendants to refund all its payments made after the effectivity of its legislative franchise on May 3, 1995.

SO ORDERED.[9]

In its decision, the RTC ruled that the "in lieu of all taxes" provision contained in Section 8 of R.A. No. 7966 absolutely excused ABS-CBN from the payment of local franchise tax imposed under Quezon City Ordinance No. SP-91, S-93. The intent of the legislature to excuse ABS-CBN from payment of local franchise tax could be discerned from the usage of the "in lieu of all taxes" provision and from the absence of any qualification except income taxes. Had Congress intended to exclude taxes imposed from the exemption, it would have expressly mentioned so in a fashion similar to the proviso on income taxes.

The RTC also based its ruling on the 1990 case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO)*.[10] In said case, the exemption of respondent electric company CEPALCO from payment of provincial franchise tax was upheld on the ground that the franchise of CEPALCO was a special law, while the Local Tax Code, on which the provincial ordinance imposing the local franchise tax was based, was a general law. Further, it was held that whenever there is a conflict between two laws, one special and particular and the other general, the special law must be taken as intended to constitute an exception to the general act.

The RTC noted that the legislative franchise of ABS-CBN was granted years after the effectivity of the LGC. Thus, it was unavoidable to conclude that Section 8 of R.A. No. 7966 was an exception since the legislature ought to be presumed to

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[9] *Id.* at 54.

[10] G.R. No. 45355, January 12, 1990, 181 SCRA 38.

have enacted it with the knowledge and awareness of the existence and prior enactment of Section 137[11] of the LGC.

In addition, the RTC, again citing the case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO),*[12] ruled that the imposition of the local franchise tax was an impairment of ABS-CBN's contract with the government. The imposition of another franchise on the corporation by the local authority would constitute an impairment of the former's charter, which is in the nature of a private contract between it and the government.

As to the amounts to be refunded, the RTC rejected Quezon City's position that a written claim for refund pursuant to Section 196 of the LGC was a condition *sine qua non* before filing the case in court. The RTC ruled that although Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (₱14,233,582.29) was the only amount stated in the letter to the Quezon City Treasurer claiming refund, ABS-CBN should nonetheless be also refunded of all payments made after the effectivity of R.A. No. 7966. The inaction of the City Treasurer on the claim for refund of ABS-CBN legally rendered any further claims for refund on the part of plaintiff absurd and futile in relation to the succeeding payments.

The City of Quezon and its Treasurer filed a motion for reconsideration which was subsequently denied by the RTC. Thus, appeal was made to the CA. On September 1, 2004, the CA dismissed the petition of Quezon City and its Treasurer. According to the appellate court, the issues raised were purely legal questions cognizable only by the Supreme Court. The CA ratiocinated:

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[11] Section 137. *Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business is* (sic) *enjoying a franchise*, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. x x x

[12] *Supra*.

For another, the issues which appellants submit for this Court's consideration are more of legal query necessitating a legal opinion rather than a call for adjudication on the matter in dispute.

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The first issue has earlier been categorized in *Province of Misamis Oriental v. Cagayan Electric and Power Co., Inc.* to be a legal one. There is no more argument to this.

The next issue although it may need the reexamination of the pertinent provisions of the local franchise and the legislative franchise given to appellee, also needs no evaluation of facts. It suffices that there may be a conflict which may need to be reconciled, without regard to the factual backdrop of the case.

The last issue deals with a legal question, because whether or not there is a prior written claim for refund is no longer in dispute. Rather, the question revolves on whether the said requirement may be dispensed with, which obviously is not a factual issue.[13]

On September 23, 2004**,** petitioner moved for reconsideration. The motion was, however, denied by the CA in its Resolution dated December 16, 2004. Hence, the present recourse.

Issues

Petitioner submits the following issues for resolution:

I.

Whether or not the phrase "in lieu of all taxes" indicated in the franchise of the respondent appellee (Section 8 of RA 7966) serves to exempt it from the payment of the local franchise tax imposed by the petitioners-appellants.

II.

Whether or not the petitioners-appellants raised factual and legal issues before the Honorable Court of Appeals.[14]

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[13] *Rollo,* pp. 64-65.

[14] *Id.* at 23.

Our Ruling

The second issue, being procedural in nature, shall be dealt with immediately. But there are other resultant issues linked to the first.

I. The dismissal by the CA of petitioners' appeal is in order because it raised purely legal issues, namely:

1) Whether appellee, whose franchise expressly provides that its payment of franchise tax shall be in *lieu of all taxes in this franchise* or earnings thereof, is absolutely excused from paying the franchise tax imposed by appellants;

2) Whether appellants' imposition of local franchise tax is a violation of appellee's legislative franchise; and

3) Whether one can do away with the requirement on prior written claim for refund.[15]

Obviously, these are purely legal questions, cognizable by this Court, to the exclusion of all other courts. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts.[16]

Section 2, Rule 50 of the Rules of Court provides that an appeal taken to the CA under Rule 41 raising only questions of law is erroneous and shall be dismissed, issues of pure law not being within its jurisdiction.[17] Consequently, the dismissal by the CA of petitioners' appeal was in order.

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[15] *Id.* at 65.

[16] *Calvo v. Vergara*, G.R. No. 134741, December 19, 2001, 372 SCRA 650, as cited in *Lavides v. Pre*, G.R. No. 127830, October 17, 2001, 367 SCRA 382.

[17] Rule 50, Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues of pure law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

In the recent case of *Sevilleno v. Carilo*,[18] this Court ruled that the dismissal of the appeal of petitioner was valid, considering the issues raised there were pure questions of law, *viz.*:

> Petitioners interposed an appeal to the Court of Appeals but it was dismissed for being the wrong mode of appeal. The appellate court held that since the issue being raised is whether the RTC has jurisdiction over the subject matter of the case, which is a question of law, the appeal should have been elevated to the Supreme Court under Rule 45 of the 1997 Rules of Civil Procedure, as amended. Section 2, Rule 41 of the same Rules which governs appeals from judgments and final orders of the RTC to the Court of Appeals, provides:
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> SEC. 2. *Modes of appeal*. —
>
> (a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
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> (b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
>
> (c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

In *Macawili Gold Mining and Development Co., Inc. v. Court of Appeals*, we summarized the rule on appeals as follows:

> (1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant

[18] G.R. No. 146454, September 14, 2007.

raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45;

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

It is not disputed that the issue brought by petitioners to the Court of Appeals involves the jurisdiction of the RTC over the subject matter of the case. We have a long standing rule that a court's jurisdiction over the subject matter of an action is conferred only by the Constitution or by statute. Otherwise put, jurisdiction of a court over the subject matter of the action is a matter of law. Consequently, issues which deal with the jurisdiction of a court over the subject matter of a case are pure questions of law. *As petitioners' appeal solely involves a question of law, they should have directly taken their appeal to this Court by filing a petition for review on certiorari under Rule 45, not an ordinary appeal with the Court of Appeals under Rule 41. Clearly, the appellate court did not err in holding that petitioners pursued the wrong mode of appeal.*

Indeed, the Court of Appeals did not err in dismissing petitioners' appeal. Section 2, Rule 50 of the same Rules provides that *an appeal from the RTC to the Court of Appeals raising only questions of law shall be dismissed; and that an appeal erroneously taken to the Court of Appeals shall be dismissed outright*, x x x.[19] (Emphasis added)

However, to serve the demands of substantial justice and equity, the Court opts to relax procedural rules and rule upon on the merits of the case. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*,[20] this Court stated:

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[19] *Sevilleno v. Carilo, id.*

[20] G.R. No. 168115, June 8, 2007, 524 SCRA 333.

Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. In *Aguam v. Court of Appeals*, the Court explained:

> "The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[21]

II. The "in lieu of all taxes" provision in its franchise does not exempt ABS-CBN from payment of local franchise tax.

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[21] *Ong Lim Sing Jr. v. FEB Leasing and Finance Corporation, id.* at 343-344.

A. The present controversy essentially boils down to a dispute between the inherent taxing power of Congress and the delegated authority to tax of local governments under the 1987 Constitution and effected under the LGC of 1991.

The power of the local government of Quezon City to impose franchise tax is based on Section 151 in relation to Section 137 of the LGC, to wit:

> Section 137. *Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise,* at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized within its territorial jurisdiction. x x x
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> x x x x x x x x x
>
> Section 151. *Scope of Taxing Powers. — Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province or municipality may impose:* Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes. (Emphasis supplied)

Such taxing power by the local government, however, is limited in the sense that Congress can enact legislation granting exemptions. This principle was upheld in *City Government of Quezon City, et al. v. Bayan Telecommunications, Inc.*[22] Said this Court:

> This thus raises the question of whether or not the City's Revenue Code pursuant to which the city treasurer of Quezon City levied real property taxes against Bayantel's real properties located within the City effectively withdrew the tax exemption enjoyed by Bayantel under its franchise, as amended.

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[22] G.R. No. 162015, March 6, 2006, 484 SCRA 169.

Bayantel answers the poser in the negative arguing that once again it is only "liable to pay the same taxes, as any other persons or corporations on all its real or personal properties, exclusive of its franchise."

Bayantel's posture is well-taken. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in *Mactan Cebu International Airport Authority*:

> "The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. x x x"

Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been effectively modified with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains essentially the same. *For as the Court stressed in Mactan, "the power to tax is [still] primarily vested in the Congress."*

This new perspective is best articulated by Fr. Joaquin G. Bernas, S.J., himself a Commissioner of the 1986 Constitutional Commission which crafted the 1987 Constitution, thus:

> "What is the effect of Section 5 on the fiscal position of municipal corporations? Section 5 does not change the doctrine that municipal corporations do not possess inherent powers of taxation. What it does is to confer municipal corporations a general power to levy taxes and otherwise create sources of revenue. They no longer have to wait for a statutory grant of these powers. The power of the legislative authority relative to the fiscal powers of local governments has been reduced to the authority to impose limitations on municipal powers. Moreover, these limitations must be "consistent with the basic policy of local autonomy." The important legal effect of Section

> 5 is thus to reverse the principle that doubts are resolved against municipal corporations. Henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of municipal corporations. It is understood, however, that taxes imposed by local government must be for a public purpose, uniform within a locality, must not be confiscatory, and must be within the jurisdiction of the local unit to pass."

In net effect, the controversy presently before the Court involves, at bottom, a clash between the inherent taxing power of the legislature, which necessarily includes the power to exempt, and the local government's delegated power to tax under the aegis of the 1987 Constitution.

Now to go back to the Quezon City Revenue Code which imposed real estate taxes on all real properties within the city's territory and removed exemptions theretofore "previously granted to, or presently enjoyed by all persons, whether natural or juridical [x x x]" *there can really be no dispute that the power of the Quezon City Government to tax is limited by Section 232 of the LGC* which expressly provides that "a province or city or municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted." Under this law, the Legislature highlighted its power to thereafter exempt certain realties from the taxing power of local government units. An interpretation denying Congress such power to exempt would reduce the phrase "not hereinafter specifically exempted" as a pure jargon, without meaning whatsoever. Needless to state, such absurd situation is unacceptable.

For sure, in *Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao*, this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:

> *"Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy.* The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing

powers, doubts must be resolved in favor of municipal corporations."[23] (Emphasis supplied)

In the case under review, the Philippine Congress enacted R.A. No. 7966 on March 30, 1995, subsequent to the effectivity of the LGC on January 1, 1992. Under it, ABS-CBN was granted the franchise to install and operate radio and television broadcasting stations in the Philippines. Likewise, Section 8 imposed on ABS-CBN the duty of paying 3% franchise tax. It bears stressing, however, that payment of the percentage franchise tax shall be "in lieu of all taxes" on the said franchise.[24]

Congress has the inherent power to tax, which includes the power to grant tax exemptions. On the other hand, the power of Quezon City to tax is prescribed by Section 151 in relation to Section 137 of the LGC which expressly provides that notwithstanding any exemption granted by any law or other special law, the City may impose a franchise tax. It must be noted that Section 137 of the LGC does not prohibit grant of future exemptions. As earlier discussed, this Court in *City Government of Quezon City v. Bayan Telecommunications, Inc.*[25] sustained the power of Congress to grant tax exemptions over and above the power of the local government's delegated power to tax.

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[23] *City Government of Quezon City v. Bayan Telecommunications, Inc., id.* at 183-186.

[24] Section 8. *Tax Provisions*. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof; Provided that the grantee, its successors or assigns shall continue to be liable for income taxes under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

[25] *Supra* note 20.

B. The more pertinent issue now to consider is whether or not by passing R.A. No. 7966, which contains the "in lieu of all taxes" provision, Congress intended to exempt ABS-CBN from local franchise tax.

Petitioners argue that the "in lieu of all taxes" provision in ABS-CBN's franchise does not expressly exempt it from payment of local franchise tax. They contend that a tax exemption cannot be created by mere implication and that one who claims tax exemptions must be able to justify his claim by clearest grant of organic law or statute.

Taxes are what civilized people pay for civilized society. They are the lifeblood of the nation. Thus, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception.[26] The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.[27]

The basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers.[28] He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be

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[26] *Mactan Cebu International Airport Authority v. Marcos,* G.R. No. 120082, September 11, 1996, 261 SCRA 667, 680.

[27] Agpalo, R.E., *Statutory Construction,* 2003 ed., p. 301.

[28] *Maceda v. Macaraeg, Jr.,* G.R. No. 88291, May 31, 1991, 197 SCRA 771, 799, citing Sands, C.D., *Statutes and Statutory Construction,* Vol. 3, p. 207.

laid beyond reasonable doubt. In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms.[29]

Section 8 of R.A. No. 7966 imposes on ABS-CBN a franchise tax equivalent to three (3) percent of all gross receipts of the radio/television business transacted under the franchise and the franchise tax shall be "in lieu of all taxes" on the franchise or earnings thereof.

The "in lieu of all taxes" provision in the franchise of ABS-CBN does not expressly provide what kind of taxes ABS-CBN is exempted from. It is not clear whether the exemption would include both local, whether municipal, city or provincial, and national tax. What is clear is that ABS-CBN shall be liable to pay three (3) percent franchise tax and income taxes under Title II of the NIRC. But whether the "in lieu of all taxes provision" would include exemption from local tax is not unequivocal.

As adverted to earlier, the right to exemption from local franchise tax must be clearly established and cannot be made out of inference or implications but must be laid beyond reasonable doubt. Verily, the uncertainty in the "in lieu of all taxes" provision should be construed against ABS-CBN. ABS-CBN has the burden to prove that it is in fact covered by the exemption so claimed. ABS-CBN miserably failed in this regard.

ABS-CBN cites the cases *Carcar Electric & Ice Plant v. Collector of Internal Revenue*,[30] *Manila Railroad v. Rafferty*,[31] *Philippine Railway Co. v. Collector of Internal Revenue*,[32] and *Visayan Electric Co. v. David*[33] to support its claim that that the "in lieu of all taxes" clause includes exemption from all taxes.

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[29] See note 27, at 302.

[30] 53 O.G. (No. 4) 1068.

[31] 40 Phil. 224 (1919).

[32] 91 Phil. 35 (1952).

[33] 92 Phil. 969 (1953).

However, a review of the foregoing case law reveals that the grantees' respective franchises expressly exempt them from municipal and provincial taxes. Said the Court in *Manila Railroad v. Rafferty*:[34]

> On the 7th day of July 1906, by an Act of the Philippine Legislature, a special charter was granted to the Manila Railroad Company. Subsection 12 of Section 1 of said Act (No. 1510) provides that:
>
> "In consideration of the premises and of the granting of this concession or franchise, there shall be paid by the grantee to the Philippine Government, annually, for the period of thirty (30) years from the date hereof, an amount equal to one-half (1/2) of one per cent of the gross earnings of the grantee in respect of the lines covered hereby for the preceding year; after said period of thirty (30) years, and for the fifty (50) years thereafter, the amount so to be paid annually shall be an amount equal to one and one-half (1½) per cent of such gross earnings for the preceding year; and after such period of eighty (80) years, the percentage and amount so to be paid annually by the grantee shall be fixed by the Philippine Government.
>
> Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature – municipal, provincial or central – upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise."[35] (Underscoring supplied)

In the case under review, ABS-CBN's franchise did not embody an exemption similar to those in *Carcar*, *Manila Railroad*, *Philippine Railway*, and *Visayan Electric*. Too, the franchise failed to specify the taxing authority from whose jurisdiction the taxing power is withheld, whether municipal, provincial, or national. In fine, since ABS-CBN failed to justify its claim for exemption from local franchise tax, by a grant expressed in terms "too plain to be mistaken" its claim for exemption for local franchise tax must fail.

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[34] *Supra*.

[35] *Manila Railroad v. Rafferty, id.* at 226.

C. The "in lieu of all taxes" clause in the franchise of ABS-CBN has become *functus officio* with the abolition of the franchise tax on broadcasting companies with yearly gross receipts exceeding Ten Million Pesos.

In its decision dated January 20, 1999, the RTC held that pursuant to the "in lieu of all taxes" provision contained in Section 8 of R.A. No. 7966, ABS-CBN is exempt from the payment of the local franchise tax. The RTC further pronounced that ABS-CBN shall instead be liable to pay a franchise tax of 3% of all gross receipts in lieu of all other taxes.

On this score, the RTC ruling is flawed. In keeping with the laws that have been passed since the grant of ABS-CBN's franchise, the corporation should now be subject to VAT, instead of the 3% franchise tax.

At the time of the enactment of its franchise on May 3, 1995, ABS-CBN was subject to 3% franchise tax under Section 117(b) of the 1977 National Internal Revenue Code (NIRC), as amended, *viz.*:

SECTION 117. *Tax on franchises.* — Any provision of general or special laws to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchise, upon the gross receipts from the business covered by the law granting the franchise, a tax in accordance with the schedule prescribed hereunder:

(a) On electric utilities, city gas, and water supplies Two (2%) percent
(b) *On telephone and/or telegraph systems, radio and/or broadcasting stations Three (3%) percent*
(c) On other franchises Five (5%) percent. (Emphasis supplied)

On January 1, 1996, R.A. No. 7716, otherwise known as the Expanded Value Added Tax Law,[36] took effect and subjected to VAT those services rendered by radio and/or broadcasting stations. Section 3 of R.A. No. 7716 provides:

Section 3. Section 102 of the National Internal Revenue Code, as amended is hereby further amended to read as follows:

[36] Approved on May 5, 1994.

> SEC. 102. *Value-added tax on sale of services and use or lease of properties.* — (a) *Rate and base of tax.* — There shall be levied, assessed and collected, as *value-added tax equivalent to 10% of gross receipts* derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines, for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; x x x *services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees* except those under Section 117 of this Code; x x x (Emphasis supplied)

Notably, under the same law, "telephone and/or telegraph systems, broadcasting stations and other franchise grantees" were omitted from the list of entities subject to franchise tax. The impression was that these entities were subject to 10% VAT but not to franchise tax. Only the franchise tax on "electric, gas and water utilities" remained. Section 12 of R.A. No. 7716 provides:

> Section 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> SEC. 117. *Tax on Franchises.* — Any provision of general or special law to the contrary notwithstanding there *shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross receipts* derived from the business covered by the law granting the franchise. (Emphasis added)

Subsequently, R.A. No. 8241[37] took effect on January 1, 1997[38] containing more amendments to the NIRC. Radio and/

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[37] Entitled "An Act Amending Republic Act No. 7716, Otherwise Known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code, as Amended." Approved on December 20, 1996.

[38] Published in the Philippine Star on January 9, 1997. Published in the Official Gazette, Vol. 93, No. 6, p. 1463, on March 10, 1997.

or television companies whose annual gross receipts **do not exceed** ₱10,000,000.00 were granted the option to choose between paying 3% national franchise tax or 10% VAT. Section 9 of R.A. No. 8241 provides:

> SECTION 9. Section 12 of Republic Act No. 7716 is hereby amended to read as follows:
>
> "Sec. 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "Sec. 117. *Tax on franchise*. — Any provision of general or special law to the contrary, notwithstanding, *there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year* ***does not exceed Ten million pesos*** *(₱10,000,000.00), subject to Section 107(d) of this Code, a tax of three percent (3%)* and on electric, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: Provided, however, *That radio and television broadcasting companies referred to in this section, shall have an option to be registered as a value-added tax payer and pay the tax due thereon*: Provided, further, That once the option is exercised, it shall not be revoked. (Emphasis supplied)

On the other hand, radio and/or television companies with yearly gross receipts **exceeding** ₱10,000,000.00 were subject to 10% VAT, pursuant to Section 102 of the NIRC.

On January 1, 1998, R.A. No. 8424[39] was passed confirming the 10% VAT liability of radio and/or television companies with yearly gross receipts exceeding ₱10,000,000.00.

R.A. No. 9337 was subsequently enacted and became effective on July 1, 2005. The said law further amended the NIRC by increasing the rate of VAT to 12%. The effectivity of the imposition of the 12% VAT was later moved from January 1, 2006 to February 1, 2006.

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[39] Otherwise known as the Tax Reform Act of 1997, amended some provisions of the 1977 NIRC by **renumbering** Section 117 as 119 and Section 102 as 108.

In consonance with the above survey of pertinent laws on the matter, ABS-CBN is subject to the payment of VAT. It does not have the option to choose between the payment of franchise tax or VAT since it is a broadcasting company with yearly gross receipts exceeding Ten Million Pesos (₱10,000,000.00).

VAT is a percentage tax imposed on any person whether or not a franchise grantee, who in the course of trade or business, sells, barters, exchanges, leases, goods or properties, renders services. It is also levied on every importation of goods whether or not in the course of trade or business. The tax base of the VAT is limited only to the value added to such goods, properties, or services by the seller, transferor or lessor. Further, the VAT is an indirect tax and can be passed on to the buyer.

The franchise tax, on the other hand, is a percentage tax imposed only on franchise holders. It is imposed under Section 119 of the Tax Code and is a direct liability of the franchise grantee.

The clause "in lieu of all taxes" does not pertain to VAT or any other tax. It cannot apply when what is paid is a tax other than a franchise tax. Since the franchise tax on the broadcasting companies with yearly gross receipts exceeding ten million pesos has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative.

In sum, ABS-CBN's claims for exemption must fail on twin grounds. First, the "in lieu of all taxes" clause in its franchise failed to specify the taxes the company is sought to be exempted from. Neither did it particularize the jurisdiction from which the taxing power is withheld. Second, the clause has become *functus officio* because as the law now stands, ABS-CBN is no longer subject to a franchise tax. It is now liable for VAT.

WHEREFORE, the petition is *GRANTED* and the appealed Decision *REVERSED AND SET ASIDE*. The petition in the trial court for refund of local franchise tax is *DISMISSED*.

S**O ORDERED.**

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

EN BANC

[G.R. No. 168299. October 6, 2008]
(Formerly G.R. Nos. 156927-29)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUIS AYCARDO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; A WEAK DEFENSE; ELEMENTS. — It is settled that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. It is thus generally rejected. For this defense to prosper, the accused must establish two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. Moreover, alibi must be supported by credible corroboration from disinterested witnesses, and where such defense is **not** corroborated, it is usually fatal to the accused.

2. CRIMINAL LAW; RAPE; THE ACCUSED MAY BE CONVICTED ON THE BASIS OF THE VICTIM'S TESTIMONY SO LONG AS THE TESTIMONY MEETS THE TEST OF CREDIBILITY. — Youth and immaturity are generally badges of truth and sincerity. No sane girl would concoct a story of defloration, allow an 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 thus impelled to seek justice for the wrong done to her. The weight of her testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value. The rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on that basis.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT MADE BY THE TRIAL COURT DESERVES GREAT REGARD AND WEIGHT ON APPEAL. — It is a

settled doctrine that the assessment made by the trial court on the credibility of witnesses deserves great regard and weight on appeal. This is because the trial judge has a unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude during the course of the testimony in open court. The exception is when the trial court's evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. The Court, after a careful review of the records of this case, finds no compelling reason to reverse the finding of the trial court.

4. CRIMINAL LAW; RAPE; PENALTY. — As regards the penalty imposed, the rape incidents occurring in 1994 and 1995 were covered by Republic Act No. 7659, which amended Art. 335 of the Revised Penal Code, thus: Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: x x x **The death penalty shall also be imposed** if the crime of rape is committed with any of the following attendant circumstances: 1) **When the victim is under eighteen (18) years of age and the offender is a** parent, ascendant, step-parent, guardian, **relative by consanguinity** or affinity **within the third civil degree**, or the common-law-spouse of the parent of the victim. The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the Complaint or Information for the penalty of death to be decreed. In these cases, the minority of private complainant and her relationship to appellant were alleged in the three Informations and proved in court. The Birth Certificate of private complainant showed that she was born on December 27, 1985. She was thus below 12 years old when she was raped in March, 1994 and April, 1995. Appellant admitted that private complainant was his niece, being the daughter of his brother. As private complainant's uncle, appellant is AAA's relative by consanguinity within the third civil degree. Since private complainant's minority and relationship to appellant were proved in court, the imposition of the death penalty was warranted under Republic Act No. 7659. However, the imposition of the death penalty has been prohibited by Republic Act No. 9346 which took effect on June 30, 2006. Sections 2 and 3 of the Act provide: Sec. 2.

In lieu of the death penalty, the following shall be imposed: (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; x x x Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. Hence, the death penalty imposed on appellant is reduced *to reclusion perpetua*, without eligibility for parole.

5. ID.; RAPE; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, WHEN PROPER. — Finally, the Court of Appeals correctly increased the trial court's award to private complainant of civil indemnity from ₱50,000 to ₱75,000. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender. Although moral damages was correctly awarded to private complainant, the amount should be increased from ₱50,000 to ₱75,000 for each case. Private complainant is entitled to moral damages, for it is assumed that she has suffered moral injuries. In addition, private complainant is entitled to exemplary damages in the amount of ₱25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00107, promulgated on May 5, 2005, which affirmed with modification the Decision of the Regional Trial Court (RTC) of Bulan, Sorsogon City, Branch 65, promulgated on October 11, 2002, finding appellant Luis Aycardo guilty of three counts of Statutory Rape and imposing on him the death penalty.

The facts are as follows:

Appellant was charged with three counts of rape under three separate Informations[1] which read:

Criminal Case No. 00-387

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of March, 1994 at more or less 9:00 o'clock in the morning at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of ₱20.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 9-year-old girl, a virgin of good reputation, his niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Criminal Case No. 00-388

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of April, 1995 at more or less 2:00 o'clock in the afternoon at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of ₱50.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 10-year-old girl, a virgin of good reputation, his

[1] CA Decision, *rollo*, pp. 4-5.

niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Criminal Case No. 00-389

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of April, 1995 at more or less 4:00 o'clock in the afternoon at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of ₱50.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 10-year-old girl, a virgin of good reputation, his niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Contrary to law.

On arraignment, appellant entered pleas of not guilty to all three charges. During the pre-trial conference, the defense admitted that private complainant AAA[2] is the niece of appellant. Thereafter, trial ensued.

AAA further testified that she was born on December 27, 1985. She grew up with her late paternal grandmother, BBB, who took care of her since she was a baby. She lived with her

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[2] The names of the private complainant and members of her immediate family are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

grandmother and appellant in one house. Appellant is her uncle, being the brother of her father.[3]

Private complainant testified that she was raped by appellant thrice in the house of her grandmother in Barangay San Francisco, Bulan, Sorsogon, when her grandmother was not around. She was first raped on March 19, 1994, when she was nine years old. At about 9:00 a.m. of that day, while she was in the house of her grandmother, appellant forcefully pulled her inside the room and pushed her toward the bed. Appellant undressed himself by removing only his trousers and brief, then he got hold of her and undressed her too. Thereafter, appellant laid on top of her and inserted his penis into her genitalia, then he made pumping motions. She felt pain. After the ordeal, appellant put on his clothes and gave her ₱20 to keep her silent. He threatened her not to tell anybody about the incident. Her grandmother returned that same day coming from the place where her other child lived. After the incident, appellant continued to stay with her grandmother in the same house.[4]

Private complainant testified that appellant raped her again when she was 10 years old. Sometime in the month of April, 1995, at about 4:00 p.m., while her grandmother went to the center of the barrio (Polot), appellant called her, but she did not want to approach him. He pulled her inside the room and pushed her toward the bed and slapped her. She fell down face up. Appellant held both of her hands and undressed her. Then appellant removed his trousers and brief and laid on top of her. She kept crying while appellant was on top of her and she felt pain. After she was sexually molested, appellant gave her ₱50 to keep her mum. Her grandmother returned home on the same day, but she did not tell her about the incident, fearing that appellant might kill her.[5]

The third rape incident was committed almost a week after the second rape in April, 1995. AAA testified that it happened

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[3] TSN, July 11, 2000, pp. 3-5.

[4] *Id.* at 5-10.

[5] *Id.* at 10-15.

at about 2:00 p.m. when her grandmother was not around. Appellant approached her, took hold of her hands and pulled her inside the room. Although she resisted, appellant overpowered her. After undressing himself and her, appellant pushed her towards the bed and sexually molested her. She felt pain. After the ordeal, appellant dressed himself and threatened her not to tell anybody or they would be killed. He again gave her ₱50.[6]

Private complainant testified that the ordeal she suffered in the hands of appellant only ended in June, 1996 when her grandmother died and her mother took her. Although her parents visited her in her grandmother's house, she was not able to inform them about the rape incidents because of fear. Her mother only learned of the rape incidents in January, 2000, because she could no longer withstand the emotional pain that she felt. Her mother brought her to a doctor for medical examination, after which they proceeded to the Department of Social Welfare and Development. They also went to the police station where she executed a sworn statement.[7]

Dr. Estrella A. Payoyo, a rural health physician, testified that on January 7, 2000, she examined private complainant, then 14 years old, and she executed a Medico-legal Report.[8] She found that complainant's hymen had old lacerations at 1, 5, 7, and 11 o'clock positions and that her vaginal orifice admitted one finger with ease. She stated that the lacerations could have been caused by sexual intercourse, specifically so if the penetration was made violently or done in a hurry. The old lacerations could have been inflicted sometime in 1995.[9]

CCC, the mother of private complainant, testified that she gave birth to AAA on December 27, 1985 in Sucat, Muntinlupa, and she identified the Birth Certificate[10] of her daughter. AAA

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[6] *Id.* at 15-19.

[7] *Id.* at 20-24.

[8] Exh. "A", *records*, p. 20.

[9] TSN, November 20, 2000, pp. 4-12.

[10] Exh. "B", *records*, p. 63.

is the eldest among her three children. Appellant is the full-blood brother of her (CCC's) husband. AAA was reared by her mother-in-law since she was four months old, and she (CCC) took her back in custody after the death of her mother-in-law. She knew about the rape incidents only on January 6, 2000. Her daughter acted strangely, which bothered her. After her daughter told her that she was raped, she brought her to the doctor. [11]

On cross-examination, CCC testified that her family does not have any dispute with appellant. She was a housewife and a permanent resident of Polot, San Francisco, Bulan, Sorsogon. Her husband is a farmer. She stated that she and her husband used to work in Manila. Her mother-in-law, BBB, was able to gain custody of her daughter, AAA, because her mother-in-law asked her husband to go home to the province to tend the ricefield. Her husband obeyed and brought with him AAA. From then on, her mother-in-law had custody of AAA. She (CCC) was refused custody of her daughter, AAA, because she was not the one who reared and took care of her. Appellant, her mother-in-law and AAA lived together in one house.[12]

On the other hand, appellant denied that he raped private complainant and put up the defense of alibi. During his direct examination, appellant testified that he was in Jamorawon, Bulan, Sorsogon as of March 1994 and that he left for Manila on December 10, 1994 and returned to Bulan only in April, 1997. Hence, appellant denied that he was living in San Francisco, Bulan, Sorsogon with his mother and private complainant when the rape incidents allegedly happened sometime in March, 1994 and in April, 1995.[13]

Appellant testified that he came to know about the complaint for rape only in the year 2000 when he received a letter from the Chief of Police of Bulan. He claimed that AAA was used

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[11] TSN, January 29, 2001, pp. 3-9.

[12] *Id.* at 10-15.

[13] TSN, September 10, 2001, p. 3.

by her mother CCC because of their long-standing dispute over a ricefield owned by a certain Crisanto. The land dispute between him and CCC started in the year 1989, and since then they were no longer in speaking terms. When he returned to Bulan in 1997, the land he was tenanting was being cultivated by private complainant's mother and her husband. Thus, what really prompted the filing of these cases against him was the long-standing dispute over the property they cultivated.[14]

On cross-examination, appellant admitted that his niece, AAA, grew up with his late mother and with him. Time and again, he stayed at the residence of his mother. However, a nephew also stayed in the house with them. He only stayed with his mother from 1994 to September 17, 1995. In 1993, when his mother suffered a stroke, AAA stayed with his sibling in Jamorawon, Bulan, Sorsogon. He actually treated AAA like his real child, showering her with love and care. He did not know any other reason why AAA would file criminal cases for rape against him because the only reason that he had in mind was the property dispute between AAA's parents and him.[15]

When the trial court asked some clarificatory questions, appellant testified that he stayed in Manila for nine years. He returned to Jamorawon, Bulan, Sorsogon when his mother had a stroke in 1993 up to March 10, 1994 on which date he went back to Manila. He returned home to Bulan when his mother died on September 17, 1994 (*sic*) [1995?]. After his mother was buried, he left for Manila and he returned to Bulan with his family in 1997. He re-affirmed that he only came to know about this case in the year 2000 when he was invited to the Police Station of Bulan. When he went home to Jamorawon together with his family, he chanced upon private complainant as well as her parents. However, the father of private complainant did not even bother to inform him about these cases during those times they met.[16]

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[14] *Id.* at 4-8.

[15] TSN, October 29, 2001, pp. 2-6.

[16] *Id.* at 8-13.

Appellant was the lone witness of the defense.

In a Decision dated October 11, 2002, the RTC found appellant guilty beyond reasonable doubt of three counts of Statutory Rape. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, accused LUIS AYCARDO having been found guilty beyond reasonable doubt of the three (3) counts of RAPE as charged, defined and penalized under Article 335 of the Revised Penal Code, as amended, by R.A. 7610 and R.A. 7659, is hereby sentenced as follows:
>
> a) To suffer the penalties of DEATH each, for the three (3) counts of RAPE committed sometime in March of 1994 and in April of 1995;
>
> b) To indemnify the victim [AAA] for each count of RAPE in the amount of ₱50,000.00 as civil indemnity, in addition to the ₱50,000.00 moral damages and costs.[17]

These consolidated cases were elevated to this Court for automatic review. The Court referred the cases to the Court of Appeals for intermediate review following *People v. Mateo*.[18]

Appellant's Brief, submitted by the Public Attorney's Office, argued that the trial court erred in convicting appellant of rape when his guilt was not proved beyond reasonable doubt. Appellant claimed that it was impossible for him to commit the alleged offenses because his testimony showed that he was in Jamorawon, Bulan, Sorsogon when the first rape on March 19, 1994 allegedly happened; while he was in Manila when the two incidents of rape in April, 1995 were allegedly committed. Moreover, the alleged rape incidents transpired more that six years before the case was filed. It is apparent that private complainant filed the case in 2000 after the land dispute between her mother and him (appellant) had arisen. Thus, private complainant was motivated to falsely testify against him.

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[17] CA *rollo*, p. 69.

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

In the Decision promulgated on May 5, 2005, the Court of Appeals affirmed the Decision of the RTC with modification, disposing thus:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Bulan, Sorsogon City, Branch 65 dated 11 October 2002 is hereby **AFFIRMED**, with the **modification** that accused-appellant is ordered to indemnify [AAA] the amount of ₱75,000.00 as civil indemnity for each count of rape.[19]

The cases were forwarded to this Court for review.

The issue is whether or not the Court of Appeals correctly affirmed the decision of the RTC finding appellant guilty beyond reasonable doubt of three counts of rape.

Appellant is charged under Art. 335 of the Revised Penal Code, which provides:

> Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.

Considering that private complainant was 9 years old at the time the first rape was allegedly committed and was 10 years old during the second and third rape incidents, the three counts of rape fall under paragraph 3 of Art. 335 of the Revised Penal Code. Carnal knowledge of a girl under 12 years old is statutory rape.[20] Consent of the offended party is immaterial as she is presumed not to have any will of her own, being of tender age.[21] The fact that the offended party is under 12 years old

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[19] *Rollo*, p. 20.

[20] *People v. Mahinay*, G.R. No. 139609, November 24, 2003, 416 SCRA 402, 409.

[21] *Ibid.*

at the time of the commission of the crime is an essential element of the crime and must be proved beyond reasonable doubt.[22] In statutory rape, violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.[23]

The prosecution proved that private complainant was under 12 years of age when she was raped by submitting in evidence her Birth Certificate showing that she was born on December 27, 1985.

The Court found private complainant's testimony that she was raped to be straightforward and credible. Her testimony is supported by the Medico-legal Report showing that her hymen had old lacerations at 1, 5, 7 and 11 o' clock positions.

Appellant, however, disputes the charges with his alibi. He alleged that he was in another place when the incidents allegedly took place. He also questioned the credibility and motive of private complainant since the complaint was filed after six years from the alleged commission of the offenses and after a land dispute arose between him and private complainant's mother (appellant's sister-in-law).

It is settled that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. It is thus generally rejected.[24] For this defense to prosper, the accused must establish two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[25] Moreover, alibi must be supported by credible corroboration from disinterested witnesses, and where such defense is **not** corroborated, it is usually fatal to the accused.[26]

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[22] *Ibid.*

[23] *People v. Pancho*, G.R. Nos. 136592-93, November 27, 2003, 416 SCRA 506, 512.

[24] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547.

[25] *Ibid.*

[26] *Id.* at 548.

Appellant claimed that during the rape incident on March 19, 1994, he was in Jamorawon, Bulan, Sorsogon; while he was in Manila during the two rape incidents which occurred sometime in April, 1995.

The Court observed that appellant testified inconsistently as regards the dates when he was in Bulan and when he left for Manila to show that he was not in San Francisco, Bulan, Sorsogon when the three rapes were committed. In his direct examination, appellant testified that he was in Jamorawon, Bulan, Sorsogon in March, 1994 and that he left for Manila on December 10, 1994. [27] The Court of Appeals thus stated that although appellant testified that he was in Jamorawon, Bulan, Sorosogon in March, 1994, this does not negate the possibility that he perpetrated the first count of rape in San Francisco, Bulan, Sorsogon, without any proof of the distance between the two places. However, during cross-examination, appellant testified that he stayed with his mother (private complainant's grandmother) from 1994 up to September 17, 1995,[28] which defeated his alibi. When the trial court asked him clarificatory questions, appellant testified that he was in Jamorawon, Bulan, Sorsogon when his mother had a stroke in 1993 up to March 10, 1994 on which date he left for Manila. He returned to Bulan on September 17, 1994 (*sic*) [1995?], when his mother died.[29]

Considering that appellant's alibi was uncorroborated and unsubstantiated by clear and convincing evidence, the Court finds it self-serving and deserving of no weight in law.[30] Appellant's alibi cannot prevail over the positive identification of private complainant that he was the one who raped her.[31]

Further, the Court finds that the delay in filing the rape cases was adequately explained by the trial court, thus:

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[27] TSN, September 10, 2001, p. 3.

[28] TSN, October 29, 2001, pp. 4-5.

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

[30] *People v. Audine, supra.*

[31] *People v. Alvarado*, G.R. No. 145730, March 19, 2002, 379 SCRA 475.

The delay in reporting the rapes that were committed against her was justifiably explained by the complainant herself in the course of her testimony in open court, which was caused by the death threats employed on her tender mind by the accused. Worth stressing, complainant was a girl of tender age who was completely under the moral ascendancy and control of the accused. Fear alone of what the accused would do if she exposed his evil deed was reason enough for her to suffer in silence for a long time. She was only able to master enough courage to expose her harrowing experience in the hands of the accused, after she was taken back into their custody by her parents due to the demise of her [grandmother].[32]

In addition, the Court of Appeals correctly disregarded appellant's assertion that the rape charges were merely fabricated because of the land dispute between appellant and private complainant's mother in the absence of any independent and corroborative evidence to support the assertion. Motives such as feuds, resentment and revenge have never swayed the Court from giving full credence to the testimony of a minor complainant.[33]

Youth and immaturity are generally badges of truth and sincerity.[34] No sane girl would concoct a story of defloration, allow an 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 thus impelled to seek justice for the wrong done to her.[35] The weight of her testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[36]

The rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that

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[32] CA *rollo*, p. 68.

[33] *People v. Audine*, *supra*, at 594.

[34] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 187.

[35] *Ibid.*

[36] *Ibid.*

rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on that basis.[37]

It is a settled doctrine that the assessment made by the trial court on the credibility of witnesses deserves great regard and weight on appeal.[38] This is because the trial judge has a unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude during the course of the testimony in open court.[39] The exception is when the trial court's evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[40] The Court, after a careful review of the records of this case, finds no compelling reason to reverse the finding of the trial court.

In fine, the Court of Appeals correctly affirmed the decision of the trial court with modification only as to the amount of civil indemnity awarded to private complainant.

As regards the penalty imposed, the rape incidents occurring in 1994 and 1995 were covered by Republic Act No. 7659,[41] which amended Art. 335 of the Revised Penal Code, thus:

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

x x x x x x x x x

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[37] *People v. Ambray*, G.R. No. 127177, February 25, 1999, 303 SCRA 697.

[38] *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 629.

[39] *Ibid*.

[40] *People v. Macapal, Jr.*, July 14, 2005, G.R. No. 155335, 463 SCRA 387.

[41] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and For Other Purposes. Republic Act No. 7659 took effect on December 31, 1993.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, **relative by consanguinity** or affinity **within the third civil degree**, or the common-law-spouse of the parent of the victim.

The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the Complaint or Information for the penalty of death to be decreed.[42]

In these cases, the minority of private complainant and her relationship to appellant were alleged in the three Informations and proved in court. The Birth Certificate[43] of private complainant showed that she was born on December 27, 1985. She was thus below 12 years old when she was raped in March, 1994 and April, 1995. Appellant admitted that private complainant was his niece, being the daughter of his brother. As private complainant's uncle, appellant is AAA's relative by consanguinity within the third civil degree. Since private complainant's minority and relationship to appellant were proved in court, the imposition of the death penalty was warranted under Republic Act No. 7659.

However, the imposition of the death penalty has been prohibited by Republic Act No. 9346[44] which took effect on June 30, 2006. Sections 2 and 3 of the Act provide:

Sec. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; x x x

Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*,

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[42] *People v. Catubig, supra,* at 630.

[43] Exhs. B to B-6, *records,* p. 63.

[44] "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Hence, the death penalty imposed on appellant is reduced *to reclusion perpetua*, without eligibility for parole.

Finally, the Court of Appeals correctly increased the trial court's award to private complainant of civil indemnity from ₱50,000 to ₱75,000.[45] Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[46]

Although moral damages was correctly awarded to private complainant, the amount should be increased from ₱50,000 to ₱75,000 for each case.[47] Private complainant is entitled to moral damages, for it is assumed that she has suffered moral injuries.[48]

In addition, private complainant is entitled to exemplary damages in the amount of ₱25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.[49]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00107 dated May 5, 2005 is hereby *AFFIRMED* with *MODIFICATION*. Appellant **LUIS AYCARDO** is found *GUILTY* beyond reasonable doubt of committing three counts of Statutory Rape against private complainant, but the three penalties of death imposed upon him are *REDUCED* to three penalties of *reclusion perpetua*, without eligibility for parole. Appellant is ordered to pay private complaint AAA (to be identified through the Informations filed with the trial court in this case)

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[45] *People v. Orbita*. G.R. No. 172091, March 31, 2008.

[46] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 646.

[47] *People v. Orbita, supra*.

[48] *People v. Orilla, supra*, at 645.

[49] Civil Code, 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.

civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000) for each case; moral damages in the amount of Seventy-Five Thousand Pesos (₱75,000) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000) for each case.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona, J., on official leave.

THIRD DIVISION

[G.R. No. 168394. October 6, 2008]

AGRARIAN REFORM BENEFICIARIES ASSOCIATION (ARBA), represented by JOSEPHINE B. OMICTIN, *petitioner, vs.* **LORETO G. NICOLAS and OLIMPIO CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISTINGUISHED FROM AN ORDINARY APPEAL. — This Court has consistently elaborated on the difference between Rule 45 and 65 petitions. A petition for review on *certiorari* under Rule 45 is an ordinary appeal. It is a continuation of the case from the CA, Sandiganbayan, RTC, or other courts. The petition must only raise questions of law which must be distinctly set forth and discussed. A petition for *certiorari* under Rule 65 is an original action. It seeks to correct errors of jurisdiction.

An error of jurisdiction is one in which the act complained of was issued by the court, officer, or quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of or in excess of jurisdiction. The purpose of the remedy of *certiorari* is to annul void proceedings; prevent unlawful and oppressive exercise of legal authority; and provide for a fair and orderly administration of justice. Applying the foregoing, errors in the appreciation of evidence may only be reviewed by appeal and not by *certiorari* because they do not involve any jurisdictional ground. Likewise, errors of law do not involve jurisdiction and may only be corrected by ordinary appeal.

2. ID.; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; DEFINED AND CONSTRUED. — A cause of action is defined as "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and act or omission of the defendant in violation of said legal right." The elements of a cause of action: (1) a right in favor of plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate the right; and (3) an act or omission on the part of defendant violative of the right of plaintiff or constituting a breach of an obligation to the latter. It is only when the last element occurs that a cause of action arises. The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint. That in determining sufficiency of cause of action, the court takes into account only the material allegations of the complaint and no other, is not a hard and fast rule. In some cases, the court considers the documents attached to the complaint to truly determine sufficiency of cause of action.

3. ID.; ID.; ID.; ID.; AS A RULE, COMPLAINT SHOULD NOT BE DISMISSED FOR INSUFFICIENCY OF CAUSE OF ACTION IF IT APPEARS CLEARLY FROM THE COMPLAINT AND ITS ATTACHMENTS THAT PLAINTIFF IS ENTITLED TO RELIEF; APPLICATION IN CASE AT BAR. — We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from

the complaint and its attachments that plaintiff is entitled to relief. The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that plaintiff is not entitled to any relief. As lawful assignees, respondents stand to be directly benefited or injured from the resolution of this case. To protect whatever rights and interests they may have in the subject lands, they rightfully pursued the actions initiated by their assignor, PhilBanking. Respondents' action is premised on the prior classification of the subject land as exempt from the coverage of the CARP. Moreover, the Court notes that this is the first time the issue of cause of action, or the lack of it, was raised. The rule is well-entrenched in this jurisdiction that matters that strike at the very heart of the petition must be raised at the very first instance. Certainly, it cannot be raised for the first time on appeal. Too, this belated claim only casts doubt on petitioner's motives. It may be a futile attempt to skirt the genuine issue, which is the propriety or impropriety of the inclusion of the subject properties under the CARP.

4. ID.; APPEALS; FINDINGS OF FACTS OF THE DEPARTMENT OF AGRARIAN REFORM CONSIDERED FINAL AND CONCLUSIVE IF BASED ON SUBSTANTIAL EVIDENCE; NOT PRESENT IN CASE AT BAR. — Section 54 of the RA No. 6657 provides that any [DAR] "decision, order, award, or ruling on any agrarian dispute or any matter pertaining to its application, implementation, enforcement, or interpretation and other pertinent laws on agrarian reform may be brought to the CA by *certiorari*." It also provides that "the findings of fact of the DAR shall be final and conclusive if based on substantial evidence." Verily, for the DARAB findings of fact to be considered final and conclusive, they must be supported by substantial evidence. This, the CA found wanting. x x x As correctly ruled by the CA, the DARAB's findings are not supported by substantial evidence. Respondents' call for due process pertained to the manner of how DAR hastily obtained the subject lands, which then belonged to PhilBanking, their assignor. Respondents raised the issue of the denial of due process with clear reference to their assignor. Doing so was consistent with their intent to continue their assignor's protests and protect their rights as assignees. It was erroneous for DARAB to conclude that PhilBanking did not oppose the DAR's acquisition of its lands. The records bear out that

PhilBanking vigorously protested the inclusion of its lands in the CARP. Only, PhilBanking opted to file its complaint for reinstatement of title and recovery of possession immediately with the RTC. The matter went all the way up to the CA, which ultimately ruled that courts have no jurisdiction. PhilBanking failed to exhaust the available administrative remedies, in the DARAB. Still, PhilBanking showed strong and vehement opposition to the inclusion of its lands within the coverage of CARL. Measured by the foregoing yardstick, the DARAB failed to support its findings of fact with substantial evidence. Evidently, its findings of fact can not be considered final and conclusive.

5. POLITICAL LAW; CONSTITUTIONAL LAW; SOCIAL JUSTICE; CLARIFIED. — This Court can not sit idly and allow a government instrumentality to trample on the rights of *bona fide* landowners in the blind race for what it proclaims as social justice. As Justice Isagani Cruz succinctly held, social justice is to be afforded to all: x x x social justice — or any justice for that matter — is for the deserving whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor simply because they are poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to eject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

APPEARANCES OF COUNSEL

Firmo P. Braganza for petitioner.
Abraham Law Office for respondents.

D E C I S I O N

REYES, R.T., *J.*:

THE DUTY of the court to protect the weak and the underprivileged should not be carried out to such an extent as

to deny justice to the landowner whenever truth and justice happen to be on his side.[1]

This is a petition for review on *certiorari* of the Decision[2] of the Court of Appeals (CA) reinstating the decision of the Department of Agrarian Reform Adjudication Board (DARAB), Tagum City, Davao del Norte. The DARAB declared the land granted to petitioner, Agrarian Reform Beneficiaries Association (ARBA), exempt from the coverage of the Comprehensive Agrarian Reform Program (CARP). It ordered, *inter alia*, the cancellation of the Certificate of Land Ownership Award (CLOA) given to ARBA and reinstated the titles under the names of respondents.

The Facts

The Philippine Banking Corporation (PhilBanking) was the registered owner of two parcels of land[3] located in *Barangay* Mintal, Davao City.[4]

On September 7, 1989, the Department of Agrarian Reform (DAR) issued a notice of coverage to PhilBanking. The DAR declared that subject parcels of land fall within the coverage of the Comprehensive Agrarian Reform Law (CARL) or Republic Act (RA) No. 6657.[5] PhilBanking immediately filed its protest.[6]

Despite Philbanking's objections, the DAR caused the cancellation of the titles of the subject parcels of land. Ownership

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[1] *Land Bank of the Philippines v. Court of Appeals*, G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149.

[2] Docketed as CA-G.R. SP No. 70357. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Estela M. Perlas-Bernabe and Edgardo A. Camello, concurring.

[3] Covered by Transfer Certificate of Title (TCT) Nos. 162077 & 162078, respectively. TCT No. 162077 contains Thirty-One Thousand Three Hundred Seventy-Four (31,374) square meters (sq m); while TCT No. 162078 contains Three Hundred Ninety-Seven Thousand Nine Hundred Forty (397,940) sq m.

[4] *Rollo*, p. 28.

[5] Effective on June 15, 1988.

[6] *Id.*

was transferred to the Republic of the Philippines. This was followed by the distribution of said land to the farmer-beneficiaries belonging to ARBA by virtue of a CLOA, more particularly described as Transfer Certificate of Title No. CL-143.[7]

On March 24, 1994, PhilBanking executed a deed of assignment in favor of respondents, Loreto G. Nicolas and Olimpio R. Cruz. As assignees and successors-in-interest, respondents continued PhilBanking's protest over DAR's takeover of their lands.

However, unlike PhilBanking, respondents filed their complaint[8] before the local DARAB in Tagum City, Davao del Norte. PhilBanking instituted before the Regional Trial Court (RTC) a complaint for reinstatement of title and recovery of possession. In their complaint with the DARAB, respondents prayed for the cancellation of the CLOA and reinstatement of titles previously registered under the name of PhilBanking.

DARAB (Tagum) Ruling

On August 28, 1998, the DARAB (Tagum) rendered a decision in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Declaring the land covered by Transfer Certificate of Title No. T-162078 situated at Davao City and covered under Compulsory Coverage of the Comprehensive Agrarian Reform Program by the public respondent (DAR) as exempted;
>
> 2. Declaring the coverage of the same under CARP as mandated pursuant to Republic Act No. 6657 void *ab initio*;
>
> 3. Ordering the Register of Deeds of Davao City to cancel the TCT No. CL-143 issued to private respondents Agrarian Reform Beneficiaries Association (ARBA) and Farmers Association of Davao-KMPI, *et al.*, and reinstate the title in favor of the petitioners;

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[7] *Id.*

[8] Docketed as DARAB Case No. XI-1482-DC-98.

4. Ordering the ARBA and Farmers Association of Davao-KMPI to choose and exercise the compensation package offered by the petitioners within five (5) days from the receipt of the decision thereof;

5. Ordering the persons acting for and in behalf of the individual ARBA and/or cooperative to voluntarily desist and vacate possession in the land mentioned under paragraph one, two and three (1, 2 and 3) hereof;

6. Counter-claim is hereby denied for lack of merit; and

7. No pronouncement as to cost.

SO ORDERED.[9]

The DARAB found the subject landholdings clearly beyond the coverage of CARL. According to the DARAB, the lands have already been re-classified as within the Urban/Urbanizing Zone (UR/URB)[10] as per City Ordinance No. 363, Series of 1982. The reclassification was subsequently approved by the City Zoning Administrator[11] and the HLURB Regional Office.[12] Later, the reclassification was reflected in the Official Comprehensive Zoning Map of Davao City.[13]

DARAB (Central Office) Ruling

Aggrieved by the local DARAB ruling, petitioner appealed to the DARAB Central Office. Acting on the appeal, the DARAB, Central Office, overturned the decision of its local office, disposing, thus:

Under the prevailing circumstances, we uphold the validity of the questioned CLOA and subsequent registration thereof with the Registry of Deeds.

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[9] *Rollo,* pp. 29-30.

[10] Records, p. 531.

[11] Davao City Zoning Administrator, Hector L. Esguerra.

[12] Region IX Officer, Roy T. Lopez.

[13] Records, p. 531.

WHEREFORE, the decision appealed from is hereby REVERSED AND SET ASIDE.

SO ORDERED.[14]

The DARAB pointed out that the DAR followed proper procedures to effect compulsory land acquisition, from the issuance of a notice of coverage to the actual distribution of CLOAs. The DARAB noted that PhilBanking did not even pose any objection to the acquisition of the property for inclusion in the CARP; and that as PhilBanking's assignees, respondents could not argue that they were not accorded due process.

Respondents then filed a motion for reconsideration and a supplemental motion for reconsideration. Both were subsequently denied by the DARAB.[15]

Dissatisfied with the Central DARAB ruling, respondents elevated the matter to the CA.[16]

In their appeal, respondents essentially contended, among others, that the DARAB (Central Office) erred in ruling that the subject parcels of lands were within the coverage of RA No. 6657, more popularly known as the CARL.

CA Disposition

On October 12, 2004, the CA granted the appeal. The *fallo* of the CA decision runs in this wise:

WHEREFORE, premises considered, the questioned Decision dated 24 September 2001 rendered by public respondent DARAB is hereby REVERSED and SET ASIDE and a new one entered:

1. Ordering the Register of Deeds of Davao City to cancel TCT No. CL-143 (CLOA No. 00044912);
2. Ordering the Register of Deeds of Davao City to reinstate Transfer Certificate of Title Nos. T-162077 and T-162078 in the name of PhilBanking;

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[14] *Rollo,* p. 30.

[15] *Id.* at 31.

[16] *Id*.

3. Maintaining the private respondents members of the ARBA and Farmers Association of Davao-KMPI in their peaceful possession and cultivation over their respective landholdings in this case if they and/or predecessors-in-interest were already tenants over the same prior to June 15, 1988; and
4. Declaring the parcels of land in question as exempted from the coverage of CARL.

No pronouncements as to costs.

SO ORDERED.[17]

The CA reiterated that the subject parcels of lands have long been reclassified as being within an urban zone before the enactment of RA No. 6657.[18] Not being agricultural land, the subject lands are clearly not within the scope of the CARL.[19] It cited with approval the local DARAB ruling:

The subject parcels of land are not within the coverage of the Comprehensive Agrarian Reform Law (CARL), hence, their having been subjected to CARP are (*sic*) patently erroneous. The subject parcels of lands has (*sic*) already been re-classified within an Urban/Urbanizing Zone (UR/URB) as per approved Official Comprehensive Zoning Map of the City of Davao as embodied in the City Ordinance No. 363, series of 1982. As such, the subject parcels of land are considered "non-agricultural" in classification and may be utilized for residential, commercial and industrial purposes (*sic*) attached thereto as Annexes "C" and "D" are the Certifications issued by Davao City Zoning Administrator Hector L. Esguerra and Region XI Officer Rey T. Lopez of the Housing & Land Use Regulatory Board.

The fact that it has been re-classified as within the urban/urbanizing zone by the local government of the City of Davao as early as 1982 or prior to the effectivity of the CARL in June 1988 (*sic*) clearly shows that the area is beyond the coverage of RA 6657. Hence, the said property can no longer be subjected to compulsory acquisition. This position finds support in Opinion No. 44, Series of 1990 of

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[17] *Id.* at 37.

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

[19] *Id.* at 33.

the Honorable Justice Secretary Franklin W. Drilon, the salient portion of said Legal Opinion is hereby quoted, thus:

> The authority of the Department of Agrarian Reform to reclassify or approve conversion of agricultural lands to non-agricultural uses may be exercised only from the date of effectivity of RA 6657 on June 15, 1988.
>
> The authority of the DAR is limited only to all public and private agricultural lands and other lands of the public domain suitable for agriculture under Section 4 of RA 6657. Corollary, Section 3(c) of RA 6657 specifically defines agricultural land as that devoted to agricultural activity as defined in this act and not classified as mineral, residential, commercial, or industrial.[20]

In ruling against petitioners and in favor of respondents, the CA applied Department of Justice (DOJ) Opinion No. 44 and this Court's ruling in *Natalia Realty, Inc. v. Department of Agrarian Reform*.[21] In both, the correct meaning and appreciation of what an agricultural land is were clarified. *Natalia* also laid the doctrine that once land has been classified as non-agricultural, it becomes outside the coverage of CARL.[22]

Issues

Petitioners have resorted to the present recourse and assign to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING FORTHWITH THE PRESENT CASE FOR LACK OF A CAUSE OF ACTION, THE RESPONDENTS HEREIN NOT HAVING SHOWN THAT THERE WAS A VALID AND LAWFUL TRANSFER OF SUBJECT REALTY TO THEM TO BE POSSESSED OF THE REQUISITE PERSONALITY TO SUE.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE NATALIA CASE APPLIES IN THE PRESENT CASE ON

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[20] *Id.* at 32-33.

[21] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

[22] *Rollo,* p. 33.

THE BASIS OF THE BARE ALLEGATION *SANS* EVIDENCE TO SHOW THAT THE TWO CASES ARE SIMILAR.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE SUBJECT PARCELS OF LAND AS EXEMPTED FROM THE COVERAGE OF CARL CONTRARY TO THE EVIDENCE AND THE FINDING OF FACTS OF THE DARAB BOARD THAT ARE MANDATED BY LAW AS "FINAL AND CONCLUSIVE" IF SUPPORTED BY SUBSTANTIAL EVIDENCE (RA 6657, SEC. 54, PAR. 2).

IV

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE MANDATE OF THE LAND REFORM LAW, RA 6657 TO ADMIT THE FINDINGS OF FACT OF DAR AS "FINAL AND CONCLUSIVE."[23] (Underscoring supplied)

Our Ruling

Before We rule on the issues, there is a need to discuss the propriety of petitioner's appeal. As aptly indicated in its pleading, this is a petition for review under Rule 45 of the Rules of Court. However, a perusal of the errors ascribed by petitioner to the CA shows that they all pertain to allegations of abuse of discretion. In fact, petitioner clearly stated that "all three errors constitute abuse of discretion amounting to lack or in excess of jurisdiction."[24]

This Court has consistently elaborated on the difference between Rule 45 and 65 petitions. A petition for review on *certiorari* under Rule 45 is an ordinary appeal. It is a continuation of the case from the CA, Sandiganbayan, RTC, or other courts. The petition must only raise questions of law which must be distinctly set forth and discussed.

A petition for *certiorari* under Rule 65 is an original action. It seeks to correct errors of jurisdiction. An error of jurisdiction is one in which the act complained of was issued by the court,

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[23] *Id.* at 19.

[24] *Id.* at 3.

officer, or quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of or in excess of jurisdiction. The purpose of the remedy of *certiorari* is to annul void proceedings; prevent unlawful and oppressive exercise of legal authority; and provide for a fair and orderly administration of justice.

Applying the foregoing, errors in the appreciation of evidence may only be reviewed by appeal and not by *certiorari* because they do not involve any jurisdictional ground. Likewise, errors of law do not involve jurisdiction and may only be corrected by ordinary appeal.

Notwithstanding the apparent procedural blunder, We opt to resolve the petition on its merits. Now, to answer the issues raised by petitioner *in seriatim*. The third and fourth issues being interrelated, they shall be discussed jointly.

Respondents are the lawful assignees and successors-in-interest of PhilBanking. Hence, they have a valid cause of action.

A cause of action is defined as "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and act or omission of the defendant in violation of said legal right."[25] The elements of a cause of action: (1) a right in favor of plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate the right; and (3) an act or omission on the part of defendant violative of the right of plaintiff or constituting a breach of an obligation to the latter.[26]

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[25] *Madrona, Sr. v. Rosal,* G.R. No. 39120, November 21, 1991, 204 SCRA 1; *Virata v. Sandiganbayan,* G.R. Nos. 86926 & 86949, October 15, 1991, 202 SCRA 680; *Caseñas v. Rosales,* G.R. No. L-18707, February 28, 1967, 19 SCRA 462; *Remitere v. Vda. de Yulo,* G.R. No. L-19751, February 28, 1966, 16 SCRA 251; *Community Investment and Finance Corporation v. Garcia,* 88 Phil. 215 (1951); *Maao Sugar Central Co. v. Barrios,* 79 Phil. 666 (1947).

[26] *China Banking Corporation v. Court of Appeals,* G.R. No. 153267, June 23, 2005, 461 SCRA 162; *Swagman Hotels and Travel, Inc. v. Court*

It is only when the last element occurs that a cause of action arises.[27]

The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint.[28] That in determining sufficiency of cause of action, the court takes into account only the material allegations of the complaint and no other, is not a hard and fast rule. In some cases, the court considers the documents attached to the complaint to truly determine sufficiency of cause of action.[29]

We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that plaintiff is entitled to relief.[30] The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that plaintiff is not entitled to any relief.

As lawful assignees, respondents stand to be directly benefited or injured from the resolution of this case. To protect whatever rights and interests they may have in the subject lands, they rightfully pursued the actions initiated by their assignor, PhilBanking. Respondents' action is premised on the prior classification of the subject land as exempt from the coverage of the CARP.

Moreover, the Court notes that this is the first time the issue of cause of action, or the lack of it, was raised. The rule is

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of Appeals, G.R. No. 161135, April 8, 2005, 455 SCRA 175; *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991, 193 SCRA 732, 747; *Cole v. Gregorio*, 202 Phil. 226, 236 (1982).

[27] *Id*.

[28] *Misamis Occidental II Cooperative, Inc. v. David*, G.R. No. 129928, August 25, 2005, 468 SCRA 63, 72.

[29] *Jimenez, Jr. v. Jordana*, G.R. No. 152526, November 25, 2004, 444 SCRA 250, 260-261.

[30] *Alberto v. Court of Appeals*, G.R. No. 119088, June 30, 2000, 334 SCRA 756, 770.

well-entrenched in this jurisdiction that matters that strike at the very heart of the petition must be raised at the very first instance. Certainly, it cannot be raised for the first time on appeal.[31]

Too, this belated claim only casts doubt on petitioner's motives. It may be a futile attempt to skirt the genuine issue, which is the propriety or impropriety of the inclusion of the subject properties under the CARP.

The ruling in *Natalia Realty, Inc. v. Department of Agrarian Reform*[32] is applicable to the present case.

We agree with the CA that the facts obtaining in this case are similar to those in *Natalia Realty*. Both subject lands form part of an area designated for non-agricultural purposes. Both were classified as non-agricultural lands prior to June 15, 1988, the date of effectivity of the CARL.

In *Natalia*, the land was within a town site area for the *Lungsod Silangan* Reservation by virtue of Proclamation No. 1637 (1979). The developers of the land were granted preliminary approval and clearances by the Human Settlements Regulatory Commission (HSRC) to establish a subdivision in the area.[33] Sometime after, the DAR sought to have the land included in the coverage of the CARL. The developer protested.[34] On appeal, this Court held that lands previously converted by government agencies to non-agricultural uses prior to the effectivity of the CARL are outside its coverage. Government agencies include the HSRC and its successor, the Housing and Land Use Regulatory Board (HLURB).[35]

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[31] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 505, citing *Lim v. Queensland Tokyo Commodities, Inc.*, G.R. No. 136031, January 4, 2002, 373 SCRA 31, 41.

[32] *Supra* note 21.

[33] *Natalia Realty, Inc. v. Department of Agrarian Reform*, *id.* at 279.

[34] *Id.* at 280.

[35] *Id.* at 283-284.

In the case under review, the subject parcels of lands were reclassified within an urban zone as per approved Official Comprehensive Zoning Map of the City of Davao. The reclassification was embodied in City Ordinance No. 363, Series of 1982. As such, the subject parcels of land are considered "non-agricultural" and may be utilized for residential, commercial, and industrial purposes. The reclassification was later approved by the HLURB.

Contrary to what petitioners think, the *Natalia* ruling was not confined solely to agricultural lands located within townsite reservations. It is also applicable to other agricultural lands converted to non-agricultural uses prior to the effectivity of the CARL. This is subject to the condition that the conversion was made with the approval of government agencies like the HLURB.[36]

The *Natalia* ruling was reiterated in *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,[37] *Junio v. Garilao*,[38] and *De Guzman v. Court of Appeals*.[39]

In *Pasong Bayabas Farmers*, this Court affirmed the authority of the Municipal Council of Carmona to issue a zoning classification and to reclassify the property in question from agricultural to residential, as approved by the HSRC (now the HLURB). It held that Section 3 of RA No. 2264,[40] amending

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[36] *Advincula-Velasquez v. Court of Appeals*, G.R. Nos. 111387 & 127497, June 8, 2004, 431 SCRA 165.

[37] G.R. Nos. 142359 & 142980, May 25, 2004, 429 SCRA 109.

[38] G.R. No. 147146, July 29, 2005, 465 SCRA 173.

[39] G.R. No. 156965, October 12, 2006, 504 SCRA 238.

[40] Otherwise known as the Local Autonomy Act of 1959. Section 3 of which provides:

Sec. 3. Additional powers of provincial boards, municipal boards or city councils and municipal and regularly organized municipal district councils. x x x

Municipal councils of municipalities and regularly organized municipal districts shall have authority:

Power to adopt zoning and planning ordinances. — Any provision of law to the contrary notwithstanding, Municipal Boards or City Councils in cities,

the Local Government Code, specifically empowered municipal and/or city councils, in consultation with the National Planning Commission, to adopt zoning and subdivision ordinances or regulations. Since the reclassification was validly exercised prior to the effectivity of CARL, the land is deemed exempted from the law's coverage.

In the more recent case of *Junio*, this Court likewise recognized the authority of the City Council of Bacolod to reclassify agricultural land as residential. Under Resolution No. 5153-A, the City Council of Bacolod reclassified the subject landholding as residential before the effectivity of the CARL. This was subsequently affirmed by the HSRC. No longer an agricultural land, it can not be subject to compulsory acquisition by the DAR for its agrarian reform program.

The findings of facts of the DARAB Central Office were not supported by substantial evidence and can not be deemed final and conclusive.

Petitioners argue that the CA should have accorded due respect and finality to the findings of facts of the DARAB Central Office.

We are not persuaded. Section 54 of the RA No. 6657 provides that any [DAR] "decision, order, award, or ruling on any agrarian dispute or any matter pertaining to its application, implementation, enforcement, or interpretation and other pertinent laws on agrarian reform may be brought to the CA by *certiorari*." It also provides that "the findings of fact of the DAR shall be final and conclusive if based on substantial evidence."

Verily, for the DARAB findings of fact to be considered final and conclusive, they must be supported by substantial evidence. This, the CA found wanting.

In ruling against respondents, the DARAB pointed out that they were in no position to raise the issue of denial of due

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and Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

process.[41] It pointed out that when the DAR compulsorily acquired the subject parcels of land, respondents were not the designated assignees of PhilBanking yet. Respondents only became so three (3) years after DAR's acquisition.[42] Also, the DARAB explained that PhilBanking did not register any objection when the lands in dispute were placed under the coverage of CARL and CLOAs were subsequently distributed.[43]

As correctly ruled by the CA, the DARAB's findings are not supported by substantial evidence. Respondents' call for due process pertained to the manner of how DAR hastily obtained the subject lands, which then belonged to PhilBanking, their assignor. Respondents raised the issue of the denial of due process with clear reference to their assignor. Doing so was consistent with their intent to continue their assignor's protests and protect their rights as assignees.

It was erroneous for DARAB to conclude that PhilBanking did not oppose the DAR's acquisition of its lands. The records bear out that PhilBanking vigorously protested the inclusion of its lands in the CARP. Only, PhilBanking opted to file its complaint for reinstatement of title and recovery of possession immediately with the RTC. The matter went all the way up to the CA, which ultimately ruled that courts have no jurisdiction. PhilBanking failed to exhaust the available administrative remedies, in the DARAB. Still, PhilBanking showed strong and vehement opposition to the inclusion of its lands within the coverage of CARL.

Measured by the foregoing yardstick, the DARAB failed to support its findings of fact with substantial evidence. Evidently, its findings of fact can not be considered final and conclusive.

This Court can not sit idly and allow a government instrumentality to trample on the rights of *bona fide* landowners in the blind race for what it proclaims as social justice. As Justice

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[41] Records, p. 35.

[42] *Id*.

[43] *Id*.

Isagani Cruz succinctly held, social justice is to be afforded to all:

> x x x social justice — or any justice for that matter — is for the deserving whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor simply because they are poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to eject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[44]

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170585. October 6, 2008]

DAVID C. LAO and JOSE C. LAO, *petitioners, vs.* **DIONISIO C. LAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; VOLUNTARY INHIBITION; DECISION IS LEFT TO THE SOUND DISCRETION OF THE JUDGE; SUSTAINED. — In cases of voluntary inhibition, the law leaves to the sound discretion

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[44] *Land Bank of the Philippines v. Court of Appeals, supra* note 1, at 157.

of the judge the decision to decide for himself the question of whether or not he will inhibit himself from the case. Section 1, Rule 137 of the Rules of Court provides: Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor, or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee, or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. Here, Justice Magpale voluntarily inhibited himself "in order to free the entire court [CA] of the slightest suspicion of bias and prejudice x x x." We certainly cannot nullify the decision of Justice Magpale recusing himself from the case because that is a matter left entirely to his discretion. Nor can We fault him for doing so. No judge should preside in a case in which he feels that he is not wholly free, disinterested, impartial, and independent.

2. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; TRANSFER OF SHARES; DUE DELIVERY OF THE CERTIFICATE OF SHARES BY THE SELLER IS REQUIRED. — Absent a written document, petitioners must prove, at the very least, possession of the certificates of shares in the name of the alleged seller. Again, they failed to prove possession. They failed to prove the due delivery of the certificates of shares of the sellers to them. Section 63 of the Corporation Code provides: Sec. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however,

shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

3. ID.; ID.; ID.; ID.; MERE INCLUSION AS SHAREHOLDER IN THE GENERAL INFORMATION SHEET SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION (SEC) IS INSUFFICIENT PROOF THAT ONE IS A SHAREHOLDER OF A COMPANY; RATIONALE. — The mere inclusion as shareholder of petitioners in the General Information Sheet of PFSC is insufficient proof that they are shareholders of the company. Petitioners bank heavily on the General Information Sheet submitted by PFSC to the SEC in which they were named as shareholders of PFSC. They claim that respondent is now estopped from contesting the General Information Sheet. While it may be true that petitioners were named as shareholders in the General Information Sheet submitted to the SEC, that document alone does not conclusively prove that they are shareholders of PFSC. The information in the document will still have to be correlated with the corporate books of PFSC. As between the General Information Sheet and the corporate books, it is the latter that is controlling. As correctly ruled by the CA: We agree with the trial court that mere inclusion in the General Information Sheets as stockholders and officers does not make one a stockholder of a corporation, for this may have come to pass by mistake, expediency or negligence. As professed by respondent-appellee, this was done merely to comply with the reportorial requirements with the SEC. This maybe against the law but "practice, no matter how long continued, cannot give rise to any vested right." If a transferee of shares of stock who failed to register such transfer in the Stock and Transfer Book of the Corporation could not exercise the rights granted unto him by law as stockholder, with more reason that such rights be denied to a person who is not a stockholder of a corporation. Petitioners-appellants never secured such a standing as stockholders of PFSC and consequently, their petition should be denied. It should be stressed that the burden of proof is on petitioners to show that they are shareholders of PFSC. This is so because they do not have any certificates of shares in their name. Moreover, they do not appear in the corporate books

as registered shareholders. If they had certificates of shares, the burden would have been with PFSC to prove that they are not shareholders of the corporation.

APPEARANCES OF COUNSEL

Romeo C. Dela Cruz for petitioners.
Pizarras and Associates Law Offices for respondent.

D E C I S I O N

REYES, R.T., *J.*:

IS the mere inclusion as shareholder in the General Information Sheet of a corporation sufficient proof that one is a shareholder in such corporation?

This is the main question for resolution in this petition for review on *certiorari* of the Amended Decision[1] of the Court of Appeals (CA) affirming the Decision[2] of the Regional Trial Court (RTC), Branch 11, Cebu City in CEB-25916-SRC.

The Facts

On October 15, 1998, petitioners David and Jose Lao filed a petition with the Securities and Exchange Commission (SEC) against respondent Dionisio Lao, president of Pacific Foundry Shop Corporation (PFSC). Petitioners prayed for a declaration as stockholders and directors of PFSC, issuance of certificates of shares in their name and to be allowed to examine the corporate books of PFSC.[3]

Petitioners claimed that they are stockholders of PFSC based on the General Information Sheet filed with the SEC, in which they are named as stockholders and directors of the corporation.

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[1] *Rollo*, pp. 44-53. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Sesinando E. Villon and Vicente L. Yap, concurring.

[2] *Id.* at 148-154. Penned by Judge Isaias Dicdican.

[3] *Id.* at 45.

Petitioner David Lao alleged that he acquired 446 shares in PFSC from his father, Lao Pong Bao, which shares were previously purchased from a certain Hipolito Lao. Petitioner Jose Lao, on the other hand, alleged that he acquired 333 shares from respondent Dionisio Lao himself.[4]

Respondent denied petitioners' claim. He alleged that the inclusion of their names in the corporation's General Information Sheet was inadvertently made. He also claimed that petitioners did not acquire any shares in PFSC by any of the modes recognized by law, namely subscription, purchase, or transfer. Since they were neither stockholders nor directors of PFSC, petitioners had no right to be issued certificates or stocks or to inspect its corporate books.[5]

On June 19, 2000, Republic Act 8799, otherwise known as the Securities Regulation Code, was enacted, transferring jurisdiction over all intra-corporate disputes from the SEC to the RTC. Pursuant to the law, the petition with the SEC was transferred to the RTC in Cebu City and docketed as Civil Case No. CEB-25916-SRC. The case was consolidated with another intra-corporate dispute, Civil Case No. CEB-25910-SRC, filed by the Heirs of Uy Lam Tiong against respondent Dionisio Lao.[6]

During pre-trial, the parties agreed to submit the case for resolution based on the evidence on record.[7]

RTC Disposition

On December 19, 2001, the RTC rendered a Joint Decision[8] with the following pertinent disposition, thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court in these cases:

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[4] *Id.* at 72-73.

[5] *Id.* at 73.

[6] *Id.* at 73-74.

[7] *Id.* at 74.

[8] *Id.* at 148-154.

(a) Denying the petition of David C. Lao and Jose C. Lao to be recognized as stockholders and directors of Pacific Foundry Shop Corporation, to be issued certificates of stock of said corporation and to be allowed to exercise rights of stockholders of the same corporation.[9]

In denying the petition, the RTC ratiocinated:

x x x Thus, the petitioners David C. Lao and Jose C Lao do not appear to have become registered stockholders of Pacific Foundry Shop corporation, as they do not appear to have acquired shares of stock of the corporation either as subscribers or by purchase from a holder of outstanding shares or by purchase from the corporation of additionally issued shares.

x x x x x x x x x

Secondly, the claim or contention of the petitioners David C. Lao and Jose C. Lao is wanting in merit because they have no stock certificates in their names. A stock certificate, as we very well know, is the evidence of ownership of corporate stock. If ever the said petitioners acquired shares of stock of the corporation, there is a need for their acquisition of said shares to be registered in the Stock and Transfer Book of the corporation. Registration is necessary to entitle a person to exercise the rights of a stockholder and to hold office as director or other offices (12 Fletcher 343). That is why it is explicitly provided in Section 63 of the Corporation Code of the Philippines that no transfer of shares of stock shall be valid until the transfer is recorded in the books of the corporation. An unregistered transfer is not valid as against the corporation (*Uson vs. Diosomito*, 61 Phil. 535). A transfer must be registered, or at least notice thereof given to the corporation for the purpose of registration, before the transferee can acquire any right as against the corporation other than the right to have the transfer registered (12 Fletcher 339). An unrecorded transferee can not enjoy the status of a stockholder, he can not vote nor he voted for (*Price & Sulu Development Corp. vs. Martin*, 58 Phil. 707). Until the transfer is registered, the transferee is not a stockholder but an outsider (*Rivera vs. Florendo*, G.R. No. 57586, October 8, 1986). So, a person who has acquired or purchased shares of stock of a corporation, and who desires to be recognized as stockholder for the purpose of

[9] *Id.* at 153-154.

voting and exercising other rights of a stockholder, must secure such a standing by having the acquisition or transfer recorded in the corporate books (*Price & Sulu development Corp. vs. Martin*, supra). Unfortunately, in the cases at bench, the petitioners David C. Lao and Jose C. Lao did not secure such a standing. Consequently, their petition to be recognized as stockholders of Pacific Foundry Shop Corporation must fail.[10]

Petitioners appealed to the CA.

CA Disposition

On May 27, 2005, the CA rendered a Decision[11] modifying that of the RTC, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered modifying the Joint Decision dated December 19, 2001 of the trial court in so far as it relates to Civil Case No. CEB-25916-SRC by:

(a) Declaring that petitioners have owned since 1987 shares of stock in Pacific Foundry Shop Corporation, numbering 446 for petitioner-appellant David C. Lao and 333 for petitioner-appellant Jose C. Lao;

(b) Ordering respondent-appellee through the corporate secretary to issue to petitioners-appellants the certificates of stock for the aforementioned number of shares;

(c) Ordering respondent-appellee, as President of Pacific Foundry Shop Corporation, to allow petitioners-appellants to exercise their rights as stock holders;

(d) Ordering respondent-appellee to call a stockholders meeting every fourth Saturday of January in accordance with the By-Laws of Pacific Foundry shop Corporation.[12]

The CA decision was penned by Justice Arsenio Magpale and concurred in by Justices Sesinando Villon and Enrico Lanzanas.

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[10] *Id.* at 152-153.

[11] *Id.* at 72-80.

[12] *Id.* at 79-80.

In modifying the RTC decision, the appellate court gave credence to the General Information Sheet submitted by petitioners that names them as stockholders of PFSC, thus:

> The General Information Sheet of PFSC for the years 1987-1998 state that petitioners-appellants David C. Lao and Jose C. Lao own 446 and 333 shares, respectively, in PFSC. It is also indicated therein that David C. Lao occupied various key positions in PFSC from 1987-1998 and Jose C. Lao served as Director in PFSC from 1990-1998. The Sworn Statements of Uy Lam Tiong, former corporate secretary of the PFSC, also state that petitioners-appellants David C. Lao and Jose C. Lao, per corporate records of PFSC, own shares of stock numbering 446 and 333, respectively. The minutes of the Annual Stockholders Meeting of PFSC on January 28, 1988 at 3:00 o'clock p.m. shows that among those present were petitioners-appellants David C. Lao and Jose C. Lao. During the said meeting, petitioner-appellant David C. Lao was nominated and elected Director of PFSC. Withal, the Minutes of the Meeting of the Board of Directors of PFSC at its Office at Hipodromo, Cebu City, on January 28, 1988 at 4:00 p.m. disclose that petitioner-appellant David C. Lao was elected vice-president of PFSC. Both minutes were signed by the officers of PFSC including respondent-appellee.[13]

Respondent filed a motion for reconsideration[14] of the CA decision.

On July 11, 2005, respondent moved to inhibit[15] the *ponente* of the CA decision, Justice Magpale, from resolving his pending motion for reconsideration.

On July 22, 2005, Justice Magpale issued a Resolution[16] voluntarily inhibiting himself from further participating in the resolution of the pending motion for reconsideration. Justice Magpale stated:

> Although the undersigned *ponente* does not agree with the imputations of respondent-appellee and that the same are not any of

[13] *Id.* at 77-78.

[14] *Id.* at 81-91.

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

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

those grounds mentioned in Rule 137 of the Revised Rules of Court, nonetheless the *ponente* voluntarily inhibits himself from further handling this case in order to free the entire court of the slightest suspicion of bias and prejudice against the respondent–appellee.[17]

Amended Decision

On August 31, 2005, the CA rendered an Amended Decision[18] affirming that of the RTC, with a *fallo* reading:

IN VIEW OF THE FOREGOING, the May 27, 2005 Decision of this Court is hereby SET ASIDE and the Decision of the Regional Trial Court, Branch 11, Cebu City with respect to Civil Case No. 25916-SRC is hereby AFIRMED *in toto*.[19]

The Amended Decision was penned by Justice Enrico Lanzanas and concurred in by Justices Sesinando Villon and Vicente Yap. The CA stated:

Petitioners-appellants maintain that they acquired their shares of stocks through transfer — the third mode mentioned by the trial court. David C. Lao claims that he acquired his 446 shares through his father, Lao Pong Bao, when the latter purchased said shares from Hipolito Lao. On the other hand, Jose C. Lao asserts that he acquired his 333 shares through Dionisio C. Lao himself from the original 1,333 shares of stocks of the latter.

Petitioner-appellants asseverations are unavailing. To substantiate their statements, they merely relied on the General Information Sheets submitted to the Securities and Exchange Commission for the year 1987 to 1998, as well as on the Minutes of the Stockholders Meeting and Board of Directors Meeting held on January 28, 1988. They did not adduce evidence that would indubitably show that there was indeed a valid transfer of stocks, *i.e*. endorsement and delivery, from the transferors, Hipolito Lao and Dionisio Lao, to them as transferees.

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To our mind, David C. Lao utterly failed to confute the argument posited by respondent-appellee or demonstrate compliance with any

[17] *Id.* at 41.

[18] *Id.* at 41-53.

[19] *Id.* at 52.

of the statutory requirements as to warrant a favorable ruling on his part. No proof was ever shown that there was endorsement and delivery to him of the stock certificates representing the 446 shares of Hipolito Lao. Neither was the transfer registered in PFSC's Stock and Transfer Book. Conversely, Dionisio C. Lao was able to show conformity with the aforementioned requirements. Accordingly, it is but logical to conclude that the certificate of stock covering 446 shares of Hipolito Lao was in fact endorsed and delivered to Dionisio C. Lao and as such is reflected in PFSC's Stock and Transfer Book x x x.

In fact, it is a rule that private transactions are presumed to have been faire and regular and that the regular course of business is presumed to have been followed. Thus, the transfer made by Hipolito Lao of the 446 shares of stocks to Dionisio C. Lao is deemed to have been valid and well-founded unless proven otherwise. David C. Lao's mere allegation that Dionisio Lao illegally appropriated upon himself the 446 shares failed to hurdle such presumption. In this jurisdiction, neither fraud nor evil is presumed and the record does not show either as to establish by clear and sufficient evidence that may lead Us to believe such allegation. The party alleging the same has the burden of proof to present evidence necessary to establish his claim, unfortunately however petitioners failed to do so. The General Information Sheets and the Minutes of the Meetings adduced by petitioners-appellants do not prove such allegation of fraud or deceit. In the absence thereof, the presumption remains that private transactions have been fair and regular.

As for the alleged shares of Jose C. Lao, We find his position identically situated with David C. Lao. There is also no evidence on record that would clearly establish how he acquired said shares of PFSC. Jose C. Lao failed to show that there was endorsement and delivery to him of the stock certificates or any documents showing such transfer or assignment. In fact, the 333 shares being claimed by him is still under the name of Dionisio C. Lao was reflected by the Certificate of Stock as well as in PFSC's Stock and Transfer Book. Corollary, Jose C. Lao could not be considered a stockholder of PFSC in the absence of support reflecting his right to the 333 shares other than the inclusion of his name in the General Information Sheets from 1987 to 1998 and the Minutes of the Stockholder's Meeting and Board of Director's Meeting.[20]

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[20] *Id.* at 48-51.

Petitioners moved for reconsideration but their motion was denied.[21] Hence, the present petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

Issues

Petitioners raise five (5) issues for Our consideration, thus:

1. Whether or not the inhibition of Justice Arsenio J. Magpale is proper when there is no "extrinsic evidence of bias, bad faith, malice, or corrupt purpose" on the part of Justice Magpale, which is required by this Honorable Court in its decision in *Webb, et al. v. People of the Philippines*, 276 SCRA 243 [1997], as basis for disqualification.

2. Whether or not the inhibition of Justice Magpale constitutes, in effect, forum shopping, which is proscribed under Section 5, Rule 7 of the Rules of Court, as amended, and decisions of this Honorable Court.

3. Whether or not determination of ownership of shares of stock in a corporation shall be based on the Stock and Transfer Book alone, or other evidence can be considered pursuant to the decision of this Honorable Court in *Tan v. Securities and Exchange Commission*, 206 SCRA 740.

4. Whether or not the admissions and representations of respondent in the General Information Sheets submitted by him to the Securities and Exchange Commission during the years 1987 to 1998 that (a) petitioners were stockholders of Pacific Foundry Shop Corporation; that (b) petitioner David C. Lao and Jose C. Lao owned 446 and 333 shares in the corporation, respectively; and that (c) petitioners had been directors and officers of the corporation, as well as the Sworn Statement of Uy Lam Tiong, former Corporate Secretary, the Minutes of the Annual Stockholders Meeting of PFSC on January 28, 1988, and the Minutes of Meeting of the Board of Directors on January 28, 1988, mentioned by Justice Magpale in his *ponencia*, are sufficient proof of petitioners ownership of stocks in the corporation.

5. Whether or not respondent is stopped from questioning petitioners' ownership of stocks in the corporation in view

[21] *Id.* at 55-56.

> of his admissions and representations in the General Information Sheets he submitted to the Securities and Exchange Commission from 1987 to 1998 that petitioners were stockholders and officers of the corporation.[22]

Essentially, only two (2) issues are raised in this petition. The first concerns the voluntary inhibition of Justice Magpale, while the second involves the substantive issue of whether or not petitioners are indeed stockholders of PFSC.

Our Ruling

We deny the petition.

Voluntary inhibition is within the sound discretion of a judge.

Petitioners claim that the motion to inhibit Justice Magpale from resolving the pending motion for reconsideration was improper and unethical. They assert that the "bias and prejudice" grounds alleged by private respondent were unsubstantiated and, worse, constituted proscribed forum shopping. They argue that Justice Magpale should have resolved the pending motion, instead of voluntarily inhibiting himself from the case.

In cases of voluntary inhibition, the law leaves to the sound discretion of the judge the decision to decide for himself the question of whether or not he will inhibit himself from the case. Section 1, Rule 137 of the Rules of Court provides:

> Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor, or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee, or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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[22] *Id.* at 279-281.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Here, Justice Magpale voluntarily inhibited himself "in order to free the entire court [CA] of the slightest suspicion of bias and prejudice x x x."[23] We certainly cannot nullify the decision of Justice Magpale recusing himself from the case because that is a matter left entirely to his discretion. Nor can We fault him for doing so. No judge should preside in a case in which he feels that he is not wholly free, disinterested, impartial, and independent.

We agree with petitioners that it may seem unpalatable and even revolting when a losing party seeks the disqualification of a judge who had previously ruled against him in the hope that a new judge might be more favorable to him. But We cannot take that basic proposition too far. That Justice Magpale opted to voluntarily recuse himself from the appealed case is already *fait accompli*. It is, in popular idiom, water under the bridge.

Petitioners cannot bank on his voluntary inhibition to nullify the Amended Decision later issued by the appellate court. It is highly specious to assume that Justice Magpale would have ruled in favor of petitioners on the pending motion for reconsideration if he took a different course and opted to stay on with the case. It is also illogical to presume that the Amended Decision would not have been issued with or without the participation of Justice Magpale. The Amended Decision is too far removed from the issue of voluntary inhibition. It does not follow that petitioners would be better off were it not for the voluntary inhibition.

Petitioners failed to prove that they are shareholders of PSFC.

Petitioners insist that they are shareholders of PFSC. They claim purchasing shares in PFSC. Petitioner David Lao alleges that he acquired 446 shares in the corporation from his father,

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[23] *Id.* at 41.

Lao Pong Bao, which shares were previously purchased from a certain Hipolito Lao. Petitioner Jose Lao, on the other hand, alleges that he acquired 333 shares from respondent Dionisio Lao.

Records, however, disclose that petitioners have no certificates of shares in their name. A certificate of stock is the evidence of a holder's interest and status in a corporation. It is a written instrument signed by the proper officer of a corporation stating or acknowledging that the person named in the document is the owner of a designated number of shares of its stock.[24] It is *prima facie* evidence that the holder is a shareholder of a corporation.

Nor is there any written document that there was a sale of shares, as claimed by petitioners. Petitioners did not present any deed of assignment, or any similar instrument, between Lao Pong Bao and Hipolito Lao; or between Lao Pong Bao and petitioner David Lao. There is likewise no deed of assignment between petitioner Jose Lao and private respondent Dionisio Lao.

Absent a written document, petitioners must prove, at the very least, possession of the certificates of shares in the name of the alleged seller. Again, they failed to prove possession. They failed to prove the due delivery of the certificates of shares of the sellers to them. Section 63 of the Corporation Code provides:

Sec. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid,

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[24] De Leon, *The Corporation Code of the Philippines Annotated*, 2002 ed., p. 550.

except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

In contrast, respondent was able to prove that he is the owner of the disputed shares. He had in his possession the certificates of stocks of Hipolito Lao. The certificates of stocks were also properly endorsed to him. More importantly, the transfer was duly registered in the stock and transfer book of the corporation. Thus, as between the parties, respondent has proven his right over the disputed shares. As correctly ruled by the CA:

Au contraire, Dionisio C. Lao was able to show through competent evidence that he is undeniably the owner of the disputed shares of stocks being claimed by David C. Lao. He was able to validate that he has the physical possession of the certificates covering the shares of Hipolito Lao. Notably, it was Hipolito Lao who properly endorsed said certificates to herein Dionisio Lao and that such transfer was registered in PFSC's Stock and Transfer Book. These circumstances are more in accord with the valid transfer contemplated by Section 63 of the Corporation Code.[25]

The mere inclusion as shareholder of petitioners in the General Information Sheet of PFSC is insufficient proof that they are shareholders of the company.

Petitioners bank heavily on the General Information Sheet submitted by PFSC to the SEC in which they were named as shareholders of PFSC. They claim that respondent is now estopped from contesting the General Information Sheet.

While it may be true that petitioners were named as shareholders in the General Information Sheet submitted to the SEC, that document alone does not conclusively prove that they are shareholders of PFSC. The information in the document will still have to be correlated with the corporate books of PFSC. As between the General Information Sheet and the corporate books, it is the latter that is controlling. As correctly ruled by the CA:

[25] *Rollo,* p. 48.

We agree with the trial court that mere inclusion in the General Information Sheets as stockholders and officers does not make one a stockholder of a corporation, for this may have come to pass by mistake, expediency or negligence. As professed by respondent-appellee, this was done merely to comply with the reportorial requirements with the SEC. This maybe against the law but "practice, no matter how long continued, cannot give rise to any vested right."

If a transferee of shares of stock who failed to register such transfer in the Stock and Transfer Book of the Corporation could not exercise the rights granted unto him by law as stockholder, with more reason that such rights be denied to a person who is not a stockholder of a corporation. Petitioners-appellants never secured such a standing as stockholders of PFSC and consequently, their petition should be denied.[26]

It should be stressed that the burden of proof is on petitioners to show that they are shareholders of PFSC. This is so because they do not have any certificates of shares in their name. Moreover, they do not appear in the corporate books as registered shareholders. If they had certificates of shares, the burden would have been with PFSC to prove that they are not shareholders of the corporation.

As discussed, petitioners failed to hurdle their burden. There is no written document evidencing their claimed purchase of shares. We note that petitioners agreed to submit their case for decision based merely on the documents on record. Hence, no testimonial evidence was presented to prove the alleged purchase of shares. Absent any documentary or testimonial evidence, the bare assertion of petitioners that they are shareholders cannot prevail.

All told, We agree with the RTC and CA decision that petitioners are not shareholders of PFSC.

WHEREFORE, the petition is *DENIED* and the appealed Amended Decision *AFFIRMED IN FULL*.

SO ORDERED.

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

[26] *Id.* at 51-52.

THIRD DIVISION

[G.R. No. 172053. October 6, 2008]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **PACIFIC EQUIPMENT CORPORATION, ANTOLIN M. ORETA, SR., and ALFONSO V. CASIMIRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE; RATIONALE; EXCEPTION. — As we have repeatedly held in a number of cases, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law, and whether it will be made by the court that rendered it or by the highest court of the land. The reason for this is that litigation must end and terminate sometime and somewhere; and it is essential for the effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and frown upon any attempt to prolong the controversies. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

2. ID.; ID.; ID.; THE RULE RESTS ON THE THEORY THAT THE *FALLO* IS THE FINAL ORDER WHILE THE OPINION IN THE BODY IS MERELY A STATEMENT ORDERING NOTHING. — To be sure, the resolution by the court of a given issue embodied in the *fallo* or dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Thus, where there is a conflict between the *fallo* and the *ratio decidendi* or body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is

merely a statement ordering nothing. However, the rule applies only when the dispositive part of a final decision or order is definite, clear and unequivocal, and can wholly be given effect without need of interpretation or construction.

3. ID.; ID.; ID.; SUPERVENING EVENTS; DEFINED AND CONSTRUED. — Supervening events refer to facts which transpire after the judgment has become final and executory, or to new circumstances which develop after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial, as they were not yet in existence at that time. In such case, the court is allowed to admit evidence of new facts and circumstances and thereafter to suspend execution of the judgment and grant relief as may be warranted which may or may not result in its modification. In the instant case, the complaint was filed in 1986; the decision sought to be implemented was rendered in 2001; and the writ of execution was issued in 2004. Clearly, the alleged failure of the respondent corporation to operate since 1981 was not a supervening event. Rather, it was an existing fact which the petitioner ignored for the longest time, only to raise it later as a convenient excuse to evade its obligation under the writ of execution. More importantly, the existence of respondent corporation as a juridical entity remains, as no action has been specifically instituted against it. There being no evidence to the contrary, we accept respondents' representation that the existence of the corporation has been extended up to 2053.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Guevarra for petitioner.
M.M. Lazaro & Associates for respondents.

D E C I S I O N

NACHURA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Court of

Appeals (CA) Decision[1] dated September 16, 2005 and its Resolution[2] dated March 27, 2006, in CA-G.R. SP No. 90053.

The facts of the case, as culled from the records, are as follows:

In July 1986, petitioner Union Bank of the Philippines filed a Complaint[3] for *Replevin and/or Sum of Money with Prayer for the Issuance of Preliminary Attachment* against respondents Pacific Equipment Corporation, Antolin M. Oreta, Sr. and Alfonso V. Casimiro (and a certain John Doe), before the Regional Trial Court (RTC) of Makati City. The case was raffled to Branch 132 and was docketed as Civil Case No. 14429.

The RTC granted petitioner's prayer for attachment and issued the corresponding Writ of Attachment.[4] Pursuant to the writ, the sheriff levied upon and attached the following personal properties of the respondents: 1) three units of air compressor "Atlas Copco"; and 2) one unit of Poclain GCH-120.[5] The attached properties were then delivered to petitioner for safekeeping.

Claiming that the attached properties were deteriorating, petitioner moved that it be authorized to sell them, and the proceeds thereof to be deposited in a bank.[6] Without awaiting the court's action on its motion, petitioner sold the attached properties.[7]

On the other hand, respondents filed a Motion for Leave to Put Up Counterbond[8] which the court granted on February 20,

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[1] Penned by Associate Justice Arturo D. Brion, with Associate Justices Eugenio S. Labitoria and Hakim S. Abdulwahid, concurring; *rollo*, pp. 51-74.

[2] *Rollo*, pp. 75-83.

[3] CA *rollo*, pp. 45-56.

[4] *Id.* at 58.

[5] *Id.* at 57.

[6] *Id.* at 70-72.

[7] *Rollo*, p. 54.

[8] CA *rollo*, pp. 94-95.

1992.[9] Respondents thus put up a counterbond and, consequently, the writ of attachment was lifted.[10]

On motion of respondents, the court declared the earlier sale of the attached properties null and void, and fixed the price thereof at ₱3,850,000.00.[11] Thereafter, respondents moved that the said amount be turned over to them[12] which the court denied on December 8, 1998.[13] This prompted the respondents to elevate the matter to the CA *via* a Petition for *Certiorari*, Prohibition and *Mandamus*, claiming that the RTC had no authority to disallow them from withdrawing the proceeds of the sale as the lifting of the writ of attachment necessarily ensued with the submission of a counterbond.[14]

On July 10, 2001, the CA decided[15] in favor of respondents, disposing, as follows:

> WHEREFORE, the assailed orders of the Regional Trial Court of Makati City are hereby MODIFIED, such that the petitioners' motion to turn-over the amount of ₱3,850,000.00, representing the proceeds of the unauthorized sale of the attached equipment belonging to the petitioners is hereby GRANTED. The respondent bank is forthwith ordered to turn-over to the petitioners the said amount inclusive of interests earned from the date of sale.
>
> SO ORDERED.[16]

With its motion for reconsideration denied by the CA,[17] petitioner filed a petition for review on *certiorari* before this Court in

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[9] *Id.* at 113-114.

[10] *Id.* at 142-146.

[11] *Id.* at 154-157.

[12] *Id.* at 190-192.

[13] *Id.* at 194.

[14] *Rollo*, p. 54.

[15] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, *concurring*; CA *rollo*, pp. 195-202.

[16] CA *rollo*, p. 202.

[17] *Id.* at 204-205.

G.R. No. 150842.[18] We, however, denied the same for failure of the petitioner to sufficiently show that the CA committed a reversible error in the assailed decision and resolution.[19] We likewise denied with finality petitioner's motion for reconsideration.[20]

In view of the finality of the aforesaid decision, respondents filed a Motion for Execution[21] which the RTC granted in an Order[22] dated January 13, 2003. The RTC also denied petitioner's motion for reconsideration on June 9, 2004;[23] hence, the Writ of Execution[24] issued on even date. The pertinent portion of the writ reads as follows:

> WE COMMAND you that of the goods and chattels of UNION BANK OF THE PHILIPPINES you cause to be made immediately the amount of THREE MILLION EIGHT HUNDRED FIFTY THOUSAND PESOS (₱3,850,000.00), Philippine currency, together with legal interest of 12% per annum from May 1990 (with respect to the amount of ₱1,900.00 (sic) and from December 1990 (with respect to the amount of ₱1,950,000.00) x x x.[25]

Pursuant to the above writ,[26] the RTC issued Notices of Garnishment. Thereupon, petitioners filed an Extremely Urgent Motion to Quash Notices of Garnishment,[27] but the RTC upheld the validity of the writ of execution and the notices of garnishment in an Order dated May 23, 2005.[28]

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[18] *Id.* at 206-227.

[19] *Id.* at 243.

[20] *Id.* at 277.

[21] *Id.* at 278-280.

[22] *Id.* at 40-41.

[23] *Id.* at 42.

[24] *Id.* at 323-324.

[25] *Id.* at 323.

[26] *Id.* at 298-299.

[27] *Id.* at 301-307.

[28] *Id.* at 43-44.

Aggrieved, petitioners challenged the RTC orders before the CA in CA-G.R. SP No. 90053, primarily on the ground that the writ of execution did not conform to the decision sought to be executed.

On September 16, 2005, the CA rendered the assailed decision, the decretal portion of which reads:

> WHEREFORE, premises considered:
>
> a. The petition is **DISMISSED** with respect to the assailed Orders dated January 13, 2003 and June 9, 2004.
>
> b. The Writ of Execution dated June 9, 2004 is hereby **ANNULLED** in so far as it imposes 12% per annum interest on the ₱3,850,000.00 due from Union Bank to the private respondents, from the [date] of the sale of the attached properties up to the day before the finality on April 3, 2002 of the Decision subject to execution. The applicable interest for this period on the ₱3,850,000.00 due is 6% per annum. The applicable interest from April 3, 2002 is 12% per annum on the balance until the amount of ₱3,850,000.00 is fully paid.
>
> c. The assailed order dated May 23, 2005 is hereby **DECLARED** valid.
>
> SO ORDERED.[29]

The CA considered the petition to have been filed out of time insofar as the Orders dated January 13, 2003 (granting the issuance of writ of execution) and June 9, 2004 (denying petitioner's motion for reconsideration), were concerned, since the petition was filed a year after the receipt of said orders.[30] Thus, the CA could no longer review the propriety of the issuance of the writ of execution. The only remaining issues for consideration, according to the appellate court, were: 1) whether the writ was in conformity with the decision to be executed; and 2) whether the writ was valid considering that it was signed only by an officer-in-charge.[31]

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[29] *Rollo*, pp. 72-73.

[30] *Id.* at 61-64.

[31] *Id.* at 64.

In sustaining the validity of the writ of execution, the appellate court held that the decision sought to be executed categorically imposed interest and even defined when interest should run, except that the rate of interest to be imposed was not specifically stated. The appellate court thus proceeded to determine the applicable interest rate, that is, 6% per annum from the date of the sale until the day prior to the finality of the decision to be executed (which is April 3, 2002); and 12% per annum after said date until full payment.[32] Considering that the RTC issued an order upholding the validity of the writ of execution, the CA considered as ratified the writ signed only by an officer-in-charge.[33]

Petitioner's motion for reconsideration was also denied by the CA; hence, the instant petition for review on *certiorari* raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED AND ACTED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT UPHELD THE VALIDITY OF THE SUBJECT WRIT OF EXECUTION.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED AND ACTED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT DECLARED THAT THE ASSAILED ORDERS DATED 13 JANUARY 2003 AND 09 JUNE 2004 COULD NO LONGER BE SUBJECT TO REVIEW.[34]

We deny the petition.

Stripped of non-essentials, the issue for resolution is whether the writ of execution is in conformity with the decision sought to be implemented.

Petitioner insists that the CA, in the decision sought to be implemented, awarded only the sum of ₱3,850,000.00 inclusive of interests. In the writ of execution implementing the aforesaid

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[32] *Id.* at 68-73.

[33] *Id.* at 71-72.

[34] *Id.* at 821-822.

decision, the RTC, aside from the above amount, awarded additional 12% thereof representing the interests earned from the date of the sale. This, according to the petitioner, clearly showed grievous error on the part of the trial court. The CA, for its part, subsequently affirmed the RTC's conclusion with a slight modification of the rate imposed by the latter.

After a careful scrutiny of the records of the case, we find no cogent reason to depart from the appellate court's decision.

We would like to stress that the instant petition is limited to the examination of the questioned writ of execution, in relation to the July 10, 2001 CA decision which had already attained finality. As we have repeatedly held in a number of cases,[35] a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law, and whether it will be made by the court that rendered it or by the highest court of the land. The reason for this is that litigation must end and terminate sometime and somewhere; and it is essential for the effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and frown upon any attempt to prolong the controversies. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

To be sure, the resolution by the court of a given issue embodied in the *fallo* or dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Thus, where there is a conflict between the *fallo* and the *ratio decidendi*

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[35] *Lee v. Regional Trial Court of Quezon City, Br. 85*, G.R. No. 146006, April 22, 2005, 456 SCRA 538, 553-554; *Mayon Estate Corporation v. Altura*, G.R. No. 134462, October 18, 2004, 440 SCRA 377, 386; *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

or body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing. However, the rule applies only when the dispositive part of a final decision or order is definite, clear and unequivocal, and can wholly be given effect without need of interpretation or construction.[36]

Ostensibly, it appears that the *fallo* of the July 10, 2001 CA decision is clear and leaves no room for doubt, as it ordered the turnover of ₱3,850,000.00 by the petitioner to the respondents. A closer scrutiny thereof, however, reveals that, as worded, the same is not, after all, clear, definite and unequivocal. Otherwise stated, a reading of the first sentence alone conveys the clear message that the CA recognized that the amount of ₱3,850,000.00 represented the proceeds of the sale. On the other hand, the second sentence tells us that the amount not only represented the proceeds of the sale, but included the interests earned from the date of the sale. This ambiguity must be clarified and, thus, we resort to ascertaining the real intention of the appellate court in the decision sought to be implemented.

First, the way the dispositive portion was framed indicates the CA's intention to award not only the proceeds of the sale but also interests earned from the date of the sale. Had the appellate court intended to hold the petitioner liable for only ₱3,850,000.00, the first sentence thereof would have sufficed, as it had already specifically granted respondents' motion for the petitioner to turn over the proceeds of the sale. In continuing with the second sentence thereof, which mentioned the "interest earned from the date of the sale," the CA clearly wanted interests to be awarded, computed from the date of the unauthorized sale. To construe the *fallo* otherwise would invite a conflict between the first and the second sentences; or imply that the CA inserted said phrase[37] only as a mere surplusage.

Second, the appellate court itself confirmed, in the questioned decision, that the proceeds of the unauthorized sale amounted

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[36] *Obra v. Badua,* G.R. No. 149125, August 9, 2007, 529 SCRA 621, 626.

[37] "interest earned from the date of the sale"

to ₱3,850,000.00. Said confirmation/recognition was shown in the dispositive portion, specifically the first sentence thereof, when it said that "the petitioners' motion to turn over the amount of ₱3,850,000.00, ***representing the proceeds of the unauthorized sale***[38] of the attached equipment belonging to the petitioners is hereby GRANTED."[39] It would not make sense, therefore, if in the end, we consider the interests earned as part of the above-mentioned amount. It would be inappropriate for a court to mean one thing in one sentence and then mean another thing in the immediately succeeding sentence. In the interest of justice, it is the court's duty, especially in the implementation of the decision, to reconcile the words and phrases used in the disposition of the case.

Lastly, the records show that the amount of ₱3,850,000.00 was fixed by the RTC in Civil Case No. 14429, on motion of the respondents, as the proceeds of the unauthorized sale. The same was embodied in an Order[40] dated May 20, 1994. Petitioner cannot now be permitted to raise anew its previous stand that the correct valuation of the subject properties was ₱480,000.00. Assuming that petitioner was correct in saying that the proceeds of the sale amounted only to ₱480,000.00, it is highly improbable that the same would earn an interest of ₱3,370,000.00 in four years' time, such that the amount due the respondents would be ₱3,850,000.00 (the proceeds of the sale, inclusive of interests).

The constant reference to the amount of ₱3,850,000.00 as the proceeds of the unauthorized sale, coupled with the appellate court's inclusion in the dispositive portion of the decision of the phrase "interest from the date of the unauthorized sale," raises the ineluctable conclusion that the CA undoubtedly intended interest to be awarded in addition to the aforesaid amount.

As to the proper rate of imposable interest, we sustain the CA's conclusion in the assailed decision, and we quote with approval its ratiocination in this wise:

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[38] Emphasis supplied.

[39] *Rollo*, p. 202.

[40] *Id.* at 134-137.

As the records of this case show and as found in the Decision of the previous petition for *certiorari*, the present case involves the return of attached properties after the filing of a counterbond. The properties could not be returned because they had been sold without the authority of the court; hence, the proceeds of the sale were demanded. Since the replacement value (or actual damages) of the attached properties is involved in this case rather than the loan or forbearance of money, goods, or credits, the interest should be at 6% per annum, due from the time stated in the Decision in the previous *certiorari* case, *i.e.*, from the time of the sale. Interest of 12% per annum is imposable from April 3, 2002 — the date the judgment of this Court became final — until full satisfaction. To the extent that the writ of execution imposed 12% prior to the finality of the Decision in the previous *certiorari* case, the writ is highly irregular as the collectible amount is outside the jurisdiction of the RTC to impose under the terms of the Decision in the previous *certiorari* case. To this extent, the lower court committed grave abuse of discretion and [the] writ of execution it caused to be issued and approved should be rectified.[41]

Petitioner further contends that the writ of execution should not have been implemented, given the present circumstances and the supervening events that transpired, *i.e.*, the failure of respondent corporation to operate since 1981.

The contention is bereft of merit.

Supervening events refer to facts which transpire after the judgment has become final and executory, or to new circumstances which develop after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial, as they were not yet in existence at that time. In such case, the court is allowed to admit evidence of new facts and circumstances and thereafter to suspend execution of the judgment and grant relief as may be warranted which may or may not result in its modification.[42] In the instant case, the complaint was filed in 1986; the decision sought to be implemented was

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[41] *Id.* at 70-71.

[42] *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, 428 Phil. 208, 228 (2002).

rendered in 2001; and the writ of execution was issued in 2004. Clearly, the alleged failure of the respondent corporation to operate since 1981 was not a supervening event. Rather, it was an existing fact which the petitioner ignored for the longest time, only to raise it later as a convenient excuse to evade its obligation under the writ of execution.

More importantly, the existence of respondent corporation as a juridical entity remains, as no action has been specifically instituted against it. There being no evidence to the contrary, we accept respondents' representation that the existence of the corporation has been extended up to 2053.

We likewise affirm respondent Alfonso Casimiro's right to receive the proceeds of the sale. Records show that petitioner itself impleaded him (Casimiro) as a party-defendant, thus, making him liable for the sum of money sought to be collected (in the principal action for collection). After the issuance of the writ of preliminary attachment, respondent corporation and the spouses Casimiro jointly posted a counterbond with Zurich Insurance Corporation as the surety.[43] As such, Casimiro is in a position to receive the proceeds of the sale pursuant to the questioned — now validated — writ of execution.

WHEREFORE, the petition is hereby *DENIED*. The Court of Appeals Decision dated September 16, 2005 and its Resolution dated March 27, 2006, in CA-G.R. SP No. 90053 are *AFFIRMED.*

SO ORDERED.

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

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[43] *Rollo,* p. 632.

EN BANC

[G.R. No. 172370. October 6, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENDA CASTRO and CHRISTOPHER TALITA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES ON MINOR DETAILS OR COLLATERAL MATTERS. —We have consistently ruled that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies. Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, they do not impair credibility where there is consistency in relating the principal occurrence and positive identification of the assailants. x x x We hold that the cited inconsistencies refer to trivial matters and are insufficient to destroy credibility. The testimonies of the witnesses for the People placed appellants at the *locus criminis*. More importantly, the witnesses steadfastly related the principal occurrence and have consistently and invariably identified appellants as the perpetrators of the gruesome killings.

2. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; DEFINED AND CONSTRUED. — Admittedly, an accused in a criminal case may only be convicted if his or her guilt is established beyond reasonable doubt. But proof beyond reasonable doubt requires only a moral certainty or that degree of proof which produces conviction in an unprejudiced mind; it does not demand absolute certainty and the exclusion of all possibility of error. After all, We do not expect witnesses to give an "error-free testimony."

3. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL JUDGE, GIVEN GREAT WEIGHT; SUSTAINED. — This Court places great weight on the factual findings of the trial

judge. He conducted the trial and heard the testimonies of the witnesses. He personally observed their conduct, demeanor and deportment while responding to the questions propounded by both the prosecutor and defense counsel. He had the opportunity to pose clarificatory questions to the parties. Tersely put, when a trial judge makes his findings as to the issue of credibility, such findings bear great weight, at times even finality, on the appellate court. In *People v. Quijada*, the Court, speaking through then Chief Justice Hilario Davide, aptly held: x x x Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. x x x Our pronouncement in *People v. Sanchez* is further illuminating on this point: The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying in his teeth.

4. ID.; ID.; DEFENSE OF ALIBI; INHERENTLY WEAK ESPECIALLY WHEN WANTING IN MATERIAL CORROBORATION. — Time and again, the Court has held that the defense of alibi is inherently weak especially when wanting in material corroboration. Categorical declarations of witnesses for the prosecution of the details of the crime are more credible than the uncorroborated alibi interposed by accused. x x x In fine, the defense of denial and alibi is an issue of fact that hinges on the credibility of witnesses. As adverted to earlier, We find the determination by the trial and

the appellate courts on the matter of the credibility of the prosecution witnesses to be clearly consistent. Thus, it must be accepted.

5. CRIMINAL LAW; PARRICIDE; ELEMENTS. — Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused.

6. ID.; MURDER; ELEMENTS. — The elements of murder, penalized under Article 248 of the Revised Penal Code, are: (1) a person is killed; (2) the deceased is killed by accused; (3) the killing is attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is neither parricide nor infanticide.

7. ID.; MURDER; PROPER PENALTY. — Since the killings were committed in 1998, the trial court as well as the CA were correct in imposing upon appellant Christopher the supreme penalty of death. In view, however, of the passage and effectivity of Republic Act (R.A.) No. **9346** on June 24, 2006, proscribing the imposition of the capital punishment, the proper imposable penalty on appellant is *reclusion perpetua*, without eligibility for parole, in line with Sections 2 and 3 of the said law. Sec. 2. In lieu of the death penalty, the following shall be imposed: a. the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or b. the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code. Sec. 3. Persons convicted of offenses punished with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. The applicability of R.A. No. 9346 is undeniable. In criminal law, it is axiomatic that *favorabilia sunt amplianda adiosa restrigenda,* penal laws which are favorable to the accused are given retroactive effect.

8. ID.; ID.; CIVIL LIABILITY; EXEMPLARY DAMAGES; WHEN AWARD THEREOF PROPER. — As to exemplary damages, the victims or the heirs are likewise entitled to

exemplary damages if aggravating circumstances, whether qualifying or generic, are present. In the case under review, treachery and evident premeditation were clearly established. Verily, an award of ₱25,000.00 as exemplary damages is justified. Under Article 2230 of the New Civil Code, exemplary damages are awarded to serve as a deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Salatandre and Associates Law Office for accused-appellants.

D E C I S I O N

REYES, R.T., *J.*:

THE BRUTAL crimes of parricide and murder are on target in this automatic review of the Decision[1] of the Court of Appeals (CA) affirming with modification that of the Regional Trial Court (RTC) in Malolos, Bulacan. The RTC found appellant Florenda Castro guilty of parricide and murder for the death of her husband and father-in-law, respectively, and her co-appellant Christopher Talita liable for two counts of murder, sentencing them to suffer the supreme penalty of death.

The Facts

On May 17, 1998, appellant Christopher Talita contracted the services of the victims Elpidio and Alfredo Castro, father and son, for the installation of window grills at an unspecified location in Santol, Balagtas, Bulacan. The Castros agreed to undertake the job for a consideration of ₱90.00 per square feet. They received instructions to proceed to Santol the next

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring; *rollo*, pp. 3-22.

day, May 18. They were to look for a certain Betty, who was supposed to show them where the job was to be done.[2]

Alfredo and his welder Jaime Carrazcal did as they were told. They, however, failed to locate Betty in Santol. That same night, Christopher re-emerged at the Castro household in Pandi, Bulacan and volunteered to accompany them to the job site the next morning.[3]

On May 19, at around 7:00 a.m., appellant Christopher arrived on schedule. Elpidio excused himself to fetch their service vehicle, an owner-type jeepney. Alfredo, together with his mother Lolita de Leon Castro, waited for the elder Castro at the balcony of their home while Christopher and Jaime waited on the street below.[4]

As Elpidio arrived on board the service jeepney, he turned to Christopher and said "*Pare, sandali lang*." He then instructed Alfredo and Jaime to board the vehicle. Jaime was the first to board and took the back seat. As Alfredo was about to enter the vehicle's passenger side, Christopher unexpectedly drew a .38 caliber revolver. He then fired at Alfredo twice, hitting him in the head. At that time, Alfredo and Christopher were a mere arms-length of each other.[5]

Christopher then went around the jeepney and trained his gun at Elpidio, shooting him twice. Elpidio instantly fell down. As Alfredo lay sprawled on the ground, Christopher shot him again.[6]

Jaime immediately got down from the vehicle as the first shot was fired. He hid for cover at a nearby fence.[7]

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[2] TSN, June 30, 1999, pp. 7-10.

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

[4] TSN, January 18, 1999, pp. 3-4.

[5] TSN, December 14, 1998, pp. 6-10.

[6] *Id.*

[7] TSN, June 30, 1999, p. 17.

After the shooting, Christopher stood at the crime scene, waiting for something. A few minutes later, a mint green Nissan Sentra arrived. In it were three passengers, including appellant Florenda, who was seated behind the driver. The door at the passenger side of the said car was open. Christopher boarded the car, which then sped away from the *locus criminis*.[8]

Alfredo died instantaneously from massive external and intracranial hemorrhage due to multiple gunshot wounds. Elpidio was rushed to the nearest hospital where he was treated for injuries in the abdomen and thorax. He expired two days later.[9]

According to Lolita Castro, she incurred ₱142,500.00[10] for the hospitalization of Elpidio Castro and ₱260,000.00[11] for the wake and burial expenses of the two victims. However, only ₱262,520.00 is substantiated by proper receipts.[12]

On December 11, 1998, appellant Florenda was indicted for parricide and murder for the death of her husband Alfredo and father-in-law Elpidio, respectively. Appellant Christopher was charged with two counts of murder. The two separate amended informations against appellants bear the following accusations:

Criminal Case No. 1087-M-98 (Murder):

That on or about the 19th day of May 1998 in the municipality of Pandi, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a gun and with intent to kill one Elpidio Castro *y* de Leon, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot with the said gun said Elpidio Castro *y* de Leon, hitting the latter on the different parts of his body, thereby inflicting mortal wounds which directly caused his death.[13]

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[8] TSN, January 18, 1999, pp. 5-6.

[9] TSN, January 25, 1999, pp. 12-13.

[10] Exhibit "S".

[11] Exhibits "T" to "T-4".

[12] Exhibits "S" & "T" to "T-3".

[13] CA *rollo*, p. 213.

Criminal Case No. 1087-M-98 (Parricide):

That on or about the 19th day of May 1998 in the municipality of Pandi, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having deliberately planned to kill Alfredo Castro with whom she was united in a lawful wedlock, conspiring and confederating with one another, accused who were armed with a gun, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and shot with said gun said Alfredo Castro, hitting him in the head and chest thereby inflicting mortal wounds which directly caused his death.[14]

At their arraignment, both appellants entered a negative plea. Trial on the merits ensued.

The evidence for the People, which portrayed the foregoing facts, was principally supplied by Godofredo del Rosario, Christopher del Rosario, Francisco Domingo, Jaime Carrazcal, Ruperto Cruz and Lolita de Leon Castro, wife to Elpidio and mother to Alfredo.

It was further revealed that appellant Florenda and the victim Alfredo had been separated since February 1998. Florenda also had a falling-out with her father-in-law over an unpaid debt. Elpidio likewise resented Florenda's bad credit standing which tended to bring shame to the Castro name.[15]

Florenda did not attend the five-day wake of her husband and father-in-law. On the date of the burial, however, she was seen filing a claim for death benefits before the Bureau of Customs, where her husband was previously employed.

Upon the other hand, denial and alibi were appellants' main exculpating line. For her part, appellant Florenda narrated that she and the victim Alfredo were married on February 13, 1993. They established a conjugal abode in Pandi, Bulacan, adjacent to that of her parents-in-law. Alfredo was a former employee

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[14] *Id*.

[15] TSN, January 19, 1999, p. 30.

of the Bureau of Customs. He was also a part-time public works contractor.[16]

Florenda testified that the first five years of her marriage with Alfredo were blissful, although they failed to conceive a child of their own. Sometime in February, 1998, she decided to leave their home in Pandi after she and Alfredo had a heated argument. She refused to extend a loan amounting to ₱380,000.00 to her brother-in-law. She moved to Makati City and stayed with the family of her son from a previous marriage.[17]

She denied that she was in Pandi, Bulacan the day her husband Alfredo and father-in-law Elpidio were shot to death. According to Florenda, she could not have left their Makati home because at that time, her right leg was swollen due to diabetes-induced boils. She likewise had no Nissan Sentra car. Anent her failure to visit the wake of her husband, she intimated that it was due to the prodding of a certain Mayor Andres of Pandi. The mayor informed her that she was a suspect in the twin killings.[18]

Appellant Christopher denied that he knew appellant Florenda. He testified that he was in Taguig City and not in Pandi, Bulacan, on the day of the incident. He likewise denied contracting the services of the Castros for the installation of window grills. He knew of no reason why the prosecution witnesses would point to him as the gunman in the shooting of Alfredo and Elpidio Castro. At present, he is serving sentence at the New Bilibid Prisons in Muntinlupa City for a different murder conviction by a Parañaque court.[19]

RTC and CA Dispositions

On August 16, 2002, the trial court handed down a judgment of conviction, disposing as follows:

WHEREFORE, the foregoing considered, this Court hereby finds accused Florenda Castro GUILTY beyond reasonable doubt of the

[16] CA *rollo*, p. 62.

[17] *Id.* at 64.

[18] *Id.* at 64-65.

[19] *Id.* at 65-66.

crimes of Murder in Crim. Case No. 1087-M-98 and Parricide in Crim. Case No. 1088-M-98, and accused Christopher Talita GUILTY beyond reasonable doubt of two counts of Murder for Crim. Cases Nos. 1087 and 1088-M-98, and sentences each of them to suffer the penalty of DEATH for each count and to pay private complainant Lolita de Leon Castro the amounts of ₱150,000.00 (₱75,000.00) as civil indemnities for the death of Elpidio Castro and Alfredo Castro, ₱100,000.00 (₱50,000.00 each) as moral damages, ₱50,000.00 (₱25,000.00 each) as exemplary damages, ₱402,500 as actual damages, and the costs of suit.

SO ORDERED.[20]

Pursuant to *People v. Mateo*,[21] which modified Rules 122, 124 and 125 of the 2000 Rules of Criminal Procedure insofar as they provide for direct appeals from the RTC to this Court in cases in which the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this case was referred to the CA for intermediate review.

On March 16, 2006, the CA rendered judgment affirming with modification that of the RTC. The *fallo* of the said decision reads:

WHEREFORE, in view of the foregoing, the decision dated August 16, 2002 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case Nos. 1087-M-98 and 1088-M-98, convicting accused-appellant FLORENDA A. CASTRO of murder and parricide, and accused-appellant CHRISTOPHER G. TALITA, of two counts of murder, and sentencing them to suffer the penalty of DEATH in both cases, is hereby AFFIRMED with the MODIFICATION that accused-appellants are ordered:

(1) in Criminal Case Nos. 1087-M-98 and 1088-M-98, to pay solidarily (in solidum) the heirs of the victims Elpidio Castro and Alfredo Castro the amount of ₱264,520.00 in actual damages;

(2) in Criminal Case No. 1087-M-98, to pay solidarily (in solidum) the heirs of the victim Elpidio Castro the amounts of ₱50,000.00 as civil indemnity, ₱25,000.00 as exemplary damages and ₱50,000.00 as moral damages; and

[20] *Id.* at 71.

[21] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

(3) in Criminal Case No. 1088-M-98, to pay solidarily (in solidum) the heirs of the victim Alfredo Castro the amounts of ₱50,000.00 as civil indemnity, ₱25,000.00 as exemplary damages and ₱50,000.00 as moral damages.

SO ORDERED.[22]

Hence, this review.

Issues

On June 13, 2006, the Court resolved to require the parties to file their respective supplemental briefs, if they so desired. In a Manifestation dated July 5, 2006, the Office of the Solicitor General (OSG), representing the People, informed the Court that it would no longer file a supplemental brief; it was adopting its main brief on record. Appellants likewise omitted to submit a supplemental brief.

In the main, appellants impute to the trial court twin errors, *viz.*:

I.

THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT;

II.

THE HONORABLE COURT ERRED IN HOLDING THAT ACCUSED, FLORENDA CASTRO, CONSPIRED WITH HER CO-ACCUSED, CHRISTOPHER TALITA, IN ALLEGEDLY KILLING ELPIDIO CASTRO AND ALFREDO CASTRO. (Underscoring supplied)[23]

Our Ruling

I. **Proof of guilt beyond reasonable doubt**.

A. Alleged contradiction *vis-à-vis* positive testimonies

In minimizing the sufficiency of the proof of their guilt, both appellants assail the contradictory testimonies and credibility

[22] *Rollo,* p. 21.

[23] CA *rollo,* p. 98.

of prosecution witnesses. According to them, there is conflict as to the position of Alfredo prior to and at the time of the shooting; as to the entry and exit points of the bullets fired; as to when witness Jaime started to run away; and as to the origin, position, model and color of the get-away vehicle. They harp on these inconsistencies, claiming that these do not refer merely to trivial matters but strike at the very manner of the commission of the crime.

We have consistently ruled that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies.[24] Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, they do not impair credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.[25]

In *People v. Sabalones*,[26] it was alleged that the prosecution account had inconsistencies relating to the number of shots heard and the interval between the gunshots and the victims' positions when they were killed. The Court dismissed those allegations as "minor and inconsequential flaws" which strengthen, and rather than impaired, the credibility of said eyewitnesses. In the same breath, the Court held then that "such harmless errors are indicative of truth, not falsehood,"[27] and did not cast serious doubt on the veracity and reliability of the testimony of complainant. Also, in *People v. Gonzales*,[28] the Court held that testimonial discrepancies could be caused by the natural fickleness of memory which tends to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony.

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[24] *People v. Bato,* G.R. No. 134939, February 16, 2000, 325 SCRA 671, 677.

[25] *People v. Valla,* G.R. No. 111285, January 24, 2000, 323 SCRA 74, 82.

[26] G.R. No. 123485, August 31, 1998, 294 SCRA 751.

[27] *Id.* at 794.

[28] G.R. No. 106098, December 7, 1993, 228 SCRA 293, 299.

We hold that the cited inconsistencies refer to trivial matters and are insufficient to destroy credibility. The testimonies of the witnesses for the People placed appellants at the *locus criminis*. More importantly, the witnesses steadfastly related the principal occurrence and have consistently and invariably identified appellants as the perpetrators of the gruesome killings.

For instance, at the bail hearing for appellant Florenda, where Christopher was absent, Godofredo del Rosario testified:

Pros. Santiago:
Q: If this assailant, the one who shot Elpidio and Alfredo, is now in Court, would you be able to recognize him again?
A: **Yes, Sir**.

Q: Will you please point to him if he is now in Court?
A: He is **not** here.[29]

x x x x x x x x x

Pros. Santiago:
Q: This Florenda, if she is now in Court, would you be able to identify her?
A: Yes, Sir.

Q: Will you please point to her if she is now in Court?
A: She is the one. (Witness pointing x x x)

Q: Will you please go down and pat her shoulder?
A: (Witness patting the shoulder of the person, who, when asked, answered to the name Florenda Castro).

Q: Do you know Florenda Castro?
A: Yes, Sir.

Q: Why do you know her?
A: She is the wife of Alfredo.

Q: The one shot by the assailant?
A: Yes, Sir.

Q: And since when have you known Florenda Castro?
A: For a long time because she resided in our place for a long time also.

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[29] TSN, December 14, 1998, p. 10.

Q: Let us go back to your sketch, what did the car do when it stops (*sic*) from this place?
A: The car is (*sic*) approaching the corner near the gunman.

Q: Where did the car stop?
A: The car stop (*sic*) at the middle near a corner.

Q: When the car stopped at the middle of this place, what did you see or notice?
A: The woman is (*sic*) pointing to someone.

Q: You are referring to Florenda Castro?
A: Yes, Sir.

Q: Towards what direction was the woman pointing?
A: Towards the gunman.[30]

For her part, private complainant Lolita Castro partly testified:

Q: After the shooting incident, what happened next?
A: When my husband and son fell down, I am about to approach them and so the gunman and I met.

Q: When meeting the gunman, what happened next?
A: He poked a gun at me that is why I returned.

Q: To your house?
A: Yes, Sir.

Q: What did you do in your house?
A: The gunman followed me but he stopped at the gate. I proceeded to the terrace to call to the municipal building to ask for help.

x x x x x x x x x

Q: After the lapse of one minute, what happened next?
A: A car arrived, the front door was already opened and the gunman boarded the said car.

Q: What kind of car arrived?
A: Color mint green.

Q: Were you able to recognize the driver of the jeep (*sic*)?
A: I did not recognize the driver because my focus was on the passengers.

[30] TSN, December 14, 1998, pp. 13-14.

Q: Aside from the driver, there are others who are occupants of the car?
A: Yes, Sir.

Q: Who?
A: **My daughter-in-law, Florenda**.

Q: If Florenda Castro is now in Court, would you be able to recognize him (*sic*) again?
A: Yes, Sir.

Q: Will you please point to her?
A: (Witness pointing to the person who, when asked, answered the name of Florenda Castro).[31]

Admittedly, an accused in a criminal case may only be convicted if his or her guilt is established beyond reasonable doubt. But proof beyond reasonable doubt requires only a moral certainty or that degree of proof which produces conviction in an unprejudiced mind; it does not demand absolute certainty and the exclusion of all possibility of error.[32] After all, We do not expect witnesses to give an "error-free testimony." ***Hindi tayo umaasa na ang mga saksi ay makapagsasalaysay nang walang anumang kamalian***.

B. Credibility of the witnesses for the People.

Upon a review of the entire records, the Court finds no cogent reason to depart from the findings and conclusions reached by both the trial and the appellate courts.

On this point, the trial court aptly observed:

Buttressing the above findings of the Court are the credible, consistent, straightforward and categorical testimonies of prosecution witnesses, particularly Godofredo del Rosario, Francisco Domingo, Lolita Castro, Ruperto Cruz, Corazon del Rosario, and Jaime Carrazcal, as supported by the testimonies of the two medico-legal officers, SPO4 Rodante Evangelista and NBI Agent Serafin Gil.

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[31] TSN, January 18, 1999, pp. 5-6.

[32] *People v. Rayles*, G.R. No. 169874, July 27, 2007, 528 SCRA 409; *Calimutan v. People*, G.R. No. 152133, February 9, 2006, 482 SCRA 44, 57.

All their testimonies, as well as those of the representatives of the Bureau of Customs, if woven together and taken in the light of the supporting documentary exhibits point to nothing but the clear and unequivocal guilt of accused Florenda Castro and Christopher Talita.

That some of the prosecution witnesses are relatives of the victim does not affect their credibility.

Blood or conjugal relationship between a witness and the victim does not per se impair the credibility of the witness — on the contrary, relationship itself could strengthen credibility in a particular case, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. (*People v. Rendoque,* 322 SCRA 622).

Private complainant Lolita Castro, who herself witnessed the incident, testified categorically on every detail of it. As ruled: The testimony of the widow of the victim is far more credit-worthy than not because of her natural interest to bring to justice the real perpetrators. (*People v. Repollo,* 332 SCRA 375).

The prosecution likewise showed beyond doubt the identities of herein two accused. Eyewitnesses Godofredo del Rosario, Francisco Domingo, Lolita Castro, Corazon del Rosario, Ruperto Cruz and Jaime Carrazcal positively identified accused Florenda Castro as the one they saw inside the get-away car. Witnesses Lolita Castro and Jaime Carrazcal, however, pointed to accused Talita as the assailant.

The Court finds no reason to doubt the testimonies of aforesaid witnesses on their identification of herein two accused. The incident happened at around 7:00 in the morning along the road of E. Rodriguez St., Poblacion, Pandi, Bulacan.

Where conditions of visibility are favorable and the witnesses did not appear to be biased against the accused, their assertions as to the identity of the malefactors should normally be accepted. (*People v. Geral,* 333 SCRA 453)

All of the eyewitnesses knew both the victims and accused Castro even before the subject incident.

When the prosecution eyewitnesses were familiar with both victim and accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to them for testifying

against the accused, then their version of the story deserves much weight. (*People v. Tolibas,* 326 SCRA 453).

Moreover, on these prosecution witnesses — from the eyewitnesses, to the police investigator, to the NBI agent, and the Bureau of Customs employees, not to mention the two medico-legal officers — no improper motive can be imputed.[33]

In the same vein, the CA found:

There is likewise no basis to doubt the positive identification of accused-appellants by the prosecution eyewitnesses.

Witnesses Godofredo Del Rosario, Christopher del Rosario and Ruperto Cruz were residents of Poblacion, Pandi, Bulacan where accused-appellant Florenda Castro and her husband Alfredo Castro resided before they separated; witness Francisco Domingo is a jeepney driver who regularly passes by at Poblacion, Pandi, Bulacan and has known accused-appellant Florenda Castro's husband Alfredo Castro since their childhood days in Siling Bata, Pandi, Bulacan; and witness Lolita Castro is accused-appellant's mother-in-law while witness Jaime Carascal works as welder in their iron works business. In view of their familiarity with accused-appellant Florenda Castro, these witnesses could not have been mistaken as to the identity of the woman seated at the back seat of the gunman's get away vehicles. Said vehicle had lightly tinted windows and was traveling at a slow pace, providing said eyewitnesses with a good look at its occupants.

On the other hand, the assailant accused-appellant Christopher Talita was positively identified by witnesses Lolita Castro and Jaime Carascal as the same person who was at the residence of the victim Alfredo Castro on May 17, 1998 and pretended to be a customer of said victim's iron works business. Said assailant shot his victims in broad daylight and in full view of these two (2) witnesses and witnesses Godofredo del Rosario, Christopher del Rosario and Ruperto Cruz, thus, their identification of accused-appellant Christopher Talita can be trusted.

x x x x x x x x x

That witnesses Lolita Castro and Christopher del Rosario are relatives of the victims is no reason to denigrate their testimonies, for it is established rule that the mere fact that the witness is a relative

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[33] CA *rollo,* pp. 69-70.

of a victim is not a valid or sufficient ground to disregard the former's testimony nor does it render the same less worthy of credit.

Finally, the testimonies of the abovenamed prosecution eyewitnesses, as corroborated by the evidence furnished by Dr. Benito Caballero who conducted the *post mortem* examinations on the bodies of victims Elpidio and Alfredo Castro, and Dr. Joselito Mendoza, who performed the emergency surgery operation on Elpidio Castro before he eventually died, confirm that the fatal wounds sustained by the victims could definitely have been inflicted by the weapon they have seen held by accused-appellant Christopher Talita during the commission of the crime.

x x x x x x x x x

Furthermore, accused-appellants aver that the testimonies of prosecution witnesses are inconsistent with the entries in the police blotter, *i.e.*, the color of the gunman's get away car was white, and not green as testified to by the prosecution eyewitnesses; the non-identification of the gunman who was merely alleged to be accused-appellant Florenda Castro's former bodyguard; and no mention about the presence of accused-appellant Florenda Castro during the incident. Suffice it to state, however, that entries in a police blotter should not be given significance or probative value as they do not constitute conclusive proof of the truth thereof. A police blotter, like any other extrajudicial statement, cannot prevail over testimony in an open court. They are not given undue significance or probative value as they are not evidence of the truth of their contents but merely of the fact that they were recorded.

We thus give full credence to the appreciation of testimonial evidence by the trial court. The oft-repeated principle is that where the credibility of a witness is an issue, the established rule is that great respect is accorded to the evaluation of the credibility of witnesses by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination.[34]

This Court places great weight on the factual findings of the trial judge. He conducted the trial and heard the testimonies of the witnesses. He personally observed their conduct, demeanor and deportment while responding to the questions propounded

[34] *Id.* at 221-223.

by both the prosecutor and defense counsel. He had the opportunity to pose clarificatory questions to the parties. Tersely put, when a trial judge makes his findings as to the issue of credibility, such findings bear great weight, at times even finality, on the appellate court.[35]

In *People v. Quijada*,[36] the Court, speaking through then Chief Justice Hilario Davide, aptly held:

> x x x Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. x x x[37]

Our pronouncement in *People v. Sanchez*[38] is further illuminating on this point:

> The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch — these can reveal if the witness is telling the truth or lying in his teeth.[39]

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[35] *People v. Rayles, supra* note 32; *People v. Lua,* G.R. Nos. 114224-25, April 26, 1996, 256 SCRA 539, 546.

[36] G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191.

[37] *People v. Quijada, id.* at 212-213.

[38] G.R. Nos. 121039-45, January 25, 1999, 302 SCRA 21.

[39] *People v. Sanchez, id.* at 45.

II. Proof of conspiracy *versus* denial and alibi

Both appellants relied on the defenses of denial and alibi. It bears stressing that positive identification by credible witnesses of the accused as the perpetrator of the crime demolishes the alibi — the much abused sanctuary of felons.[40] In the case under review, appellant Florenda was positively identified by key prosecution witnesses as one of the passengers of the get-away vehicle used by the assailant Christopher. The witnesses for the People are sufficiently and adequately familiar with Florenda. The witnesses for the prosecution were either appellant's neighbors or related to her by affinity. As for appellant Christopher, the evidence pointing to him as the triggerman that fell both Alfredo and Elpidio is overwhelming.

Moreover, appellants failed to present corroborating evidence to buttress their respective alibi. Other than their bare allegations, no witness was introduced by the defense to corroborate their respective accounts and controvert the People's version of the incident placing them at the scene of the crime. Time and again, the Court has held that the defense of alibi is inherently weak especially when wanting in material corroboration.[41] Categorical declarations of witnesses for the prosecution of the details of the crime are more credible than the uncorroborated alibi interposed by accused.[42] We quote with approval the CA's elucidation along this line:

> Unsubstantiated by clear and convincing proofs, accused-appellants' respective denials necessarily fail. An intrinsically weak defense, denial must be buttressed by strong evidence of non-culpability in order to merit credibility. Mere denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight

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[40] *People v. Pamor,* G.R. No. 108599, October 7, 1994, 237 SCRA 462; *People v. Enciso,* G.R. No. 105361, June 25, 1993, 223 SCRA 675; *People v. Kyamko,* G.R. No. 103805, May 17, 1993, 222 SCRA 183; *People v. Taneo,* G.R. No. 87236, February 8, 1993, 218 SCRA 494.

[41] *People v. Sanchez, supra* note 38; *People v. Enciso, supra* note 40.

[42] *People v. Sanchez,* G.R. No. 131116, August 27, 1999, 313 SCRA 254, 269.

than the declaration of credible witnesses who testify on affirmative matters.

Denial and alibi are weak defenses which are unavailing in the face of positive identification.

At any rate, it was for the trial judge, using his sound discretion and his observations at the trial, to determine whom to believe among the witnesses of the parties who gave conflicting testimonies on the whereabouts of accused-appellants in the unholy morning of May 19, 1998. As earlier said, findings of fact and assessment of credibility of witnesses, are matters which are best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' behavior on the stand while testifying, which opportunity is denied to the appellate courts. Thus, unless the trial court has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of witnesses will be respected by the appellate court. We have meticulously examined the records, and found that the trial court's decision has considered every material fact and piece of evidence in this case.[43]

In fine, the defense of denial and alibi is an issue of fact that hinges on the credibility of witnesses. As adverted to earlier, We find the determination by the trial and the appellate courts on the matter of the credibility of the prosecution witnesses to be clearly consistent. Thus, it must be accepted.

III. Crimes committed

All told, the Court is convinced that the evidence for the People proved beyond reasonable doubt that appellant Florenda is guilty of parricide for the killing of her husband Alfredo and for murder for the death of her father-in-law Elpidio. The crime of parricide, defined in Article 246 of the Revised Penal Code, states:

Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

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[43] CA *rollo,* pp. 224-225.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused.[44]

The elements of murder, penalized under Article 248 of the Revised Penal Code, are: (1) a person is killed; (2) the deceased is killed by accused; (3) the killing is attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is neither parricide nor infanticide.[45]

The records bear out that appellant Florenda conspired and confederated with her co-appellant Christopher in carrying out the brutal killing of Alfredo and Elpidio. While Christopher acted as the gunman, Florenda sowed the seeds of violence by masterminding the reprehensible deed. Undeniably, their concerted actions showed community of purpose and design that formed a chain of evidence that established conspiracy to commit parricide and murder.

The Court, **however**, was recently informed[46] that appellant **Florenda Castro died on February 14, 2008** while under the custody of the Bureau of Corrections in Muntinlupa City. Considering that said appellant died before her conviction for parricide and murder attained finality, her criminal as well as civil liabilities are extinguished.[47]

Verily, the CA sentencing needs modification with respect to appellant Florenda.

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[44] Reyes, L.B., *The Revised Penal Code*, Vol. 2, 1993, p. 414.

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

[46] Letter dated March 17, 2008, of Asst. Dir. Julio Arciaga, Bureau of Corrections.

[47] Article 89(1) of the Revised Penal Code provides:

ART. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment.

Proper penalty

Since the killings were committed in 1998, the trial court as well as the CA were correct in imposing upon appellant Christopher the supreme penalty of death. In view, however, of the passage and effectivity of Republic Act (R.A.) No. **9346**[48] on June 24, 2006, proscribing the imposition of the capital punishment,[49] the proper imposable penalty on appellant is *reclusion perpetua*, without eligibility for parole, in line with Sections 2 and 3 of the said law.

> Sec. 2. In lieu of the death penalty, the following shall be imposed:
>
> a. the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> b. the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.
>
> Sec. 3. Persons convicted of offenses punished with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Underscoring supplied)

The applicability of R.A. No. 9346 is undeniable. In criminal law, it is axiomatic that *favorabilia sunt amplianda adiosa restrigenda*, penal laws which are favorable to the accused are given retroactive effect.[50] ***Ang mga batas sa krimen na pabor sa nasasakdal ay binibigyan ng balik-bisa***.

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[48] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[49] Republic Act No. 9346, Sec. 1 provides:

> Sec. 1. The imposition of the penalty of death is hereby prohibited. Accordingly, R.A. No. 8177, otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. R.A. 7659, otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[50] Revised Penal Code, Art. 22.

The CA disposition on civil liabilities imposed on appellant Christopher in favor of the heirs of the victims needs clarification. Only the amount of ₱262,520.00 (not ₱264,520.00) was substantiated by proper receipts. Hence, the reduction in the award of the damages is in order.

Anent the CA awards of civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱25,000.00 in **each** case, they are in accord with current jurisprudence.

In *Malana v. People*,[51] We convicted the accused of murder and ordered him to pay the victim the amounts of ₱50,000.00 as civil indemnity and another ₱50,000.00 by way of moral damages. The same civil indemnity and moral damages were awarded by the Court to the heirs of the murdered victims in *People v. Segobre*,[52] *People v. Ausa*,[53] and in *People v. Piliin*.[54]

As to exemplary damages, the victims or the heirs are likewise entitled to exemplary damages if aggravating circumstances, whether qualifying or generic, are present. In the case under review, treachery and evident premeditation were clearly established. Verily, an award of ₱25,000.00 as exemplary damages is justified. Under Article 2230 of the New Civil Code, exemplary damages are awarded to serve as a deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.[55]

WHEREFORE, the Decision of the Court of Appeals is *AFFIRMED WITH MODIFICATION* as follows:

(1) The cases against appellant Florenda Castro are dismissed, as her criminal and civil liabilities are EXTINGUISHED by reason of her death;

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[51] G.R. No. 173612, March 26, 2008.

[52] G.R. No. 169877, February 14, 2008.

[53] G.R. No. 174194, March 20, 2007.

[54] G.R. No. 172966, February 8, 2007.

[55] *People v. Gandia*, G.R. No. 175332, February 6, 2008; *People v. Daleba, Jr.*, G.R. No. 168100, November 20, 2007.

(2) Appellant Christopher Talita is sentenced to *reclusion perpetua* without eligibility for parole. He is also ordered to pay ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages to each set of heirs of Elpidio Castro and Alfredo Castro.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona,[*] *Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura,*[**] *Leonardo-de Castro,* and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172933. October 6, 2008]

JESUS E. VERGARA, *petitioner, vs.* **HAMMONIA MARITIME SERVICES, INC. and ATLANTIC MARINE LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISABILITY BENEFITS; GOVERNED BY LAW AND CONTRACT. — Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000

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[*] On official leave per Special Order No. 520 dated September 19, 2008.

[**] No part. Justice Nachura participated as Solicitor General in the instant case.

of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other. x x x In real terms, this means that the shipowner — an employer operating outside Philippine jurisdiction — does not subject itself to Philippine laws, except to the extent that it concedes the coverage and application of these laws under the POEA Standard Employment Contract. On the matter of disability, the employer is not subject to Philippine jurisdiction in terms of being compelled to contribute to the State Insurance Fund that, under the Labor Code, Philippine employers are obliged to support. (This Fund, administered by the Employees' Compensation Commission, is the source of work-related compensation payments for work-related deaths, injuries, and illnesses.) Instead, the POEA Standard Employment Contract provides its own system of disability compensation that approximates (and even exceeds) the benefits provided under Philippine law. The standard terms agreed upon, as above pointed out, are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

2. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; EXPLAINED. – Article 192(c)(1) of the Labor Code provides that: x x x The following disabilities shall be deemed **total and permanent**: (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules**; x x x The rule referred to - Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states: Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20

(3) states: Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

3. ID.; ID.; ID.; ID.; DECLARATION THEREOF AFTER THE INITIAL 120 DAYS OF TEMPORARY TOTAL DISABILITY CANNOT BE APPLIED AS A GENERAL RULE; RATIONALE. — As a last point, the petitioner has repeatedly invoked our ruling in *Crystal Shipping, Inc. v. Natividad,* apparently for its statement that the respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations. Additionally and to reiterate what we pointed out above regarding the governing rules that affect the disability of Filipino seafarers in ocean-going vessels, the POEA Standard Employment Contract provides its own Schedule of Disability or Impediment for

Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted (Section 32); Disability Allowances (a subpart of Section 32); and its own guidelines on Occupational Diseases (Section 32-A) which cannot be disregarded in considering disability compensation and benefits. All these read in relation with applicable Philippine laws and rules — should also be taken into account in considering and citing *Crystal Shipping* and its related line of cases as authorities.

4. ID.; ID.; ID.; ID.; THE FINAL DETERMINATION OF WHOSE OPINION MUST PREVAIL ABOUT THE SEAFARER'S FITNESS OR UNFITNESS FOR WORK MUST BE DONE IN ACCORDANCE WITH AN AGREED PROCEDURE; NOT PRESENT IN CASE AT BAR. — The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them. Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Soo Gutierrez Leogardo & Lee for respondents.

D E C I S I O N

BRION, *J.*:

Seaman Jesus E. Vergara (*petitioner*) comes to us through this Petition for Review on *Certiorari*[1] with the plea that we

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-27.

set aside — for being contrary to law and jurisprudence — the Decision[2] promulgated on March 14, 2005 and the Resolution[3] promulgated on June 7, 2005 by the Court of Appeals (*CA*), both issued in C.A.-G.R. SP No. 85347 entitled *Jesus E. Vergara v. National Labor Relations Commission, et al.*

THE FACTUAL BACKGROUND

On April 4, 2000, petitioner was hired by respondent Hammonia Maritime Services, Inc. (*Hammonia*) for its foreign principal, respondent Atlantic Marine Ltd., (*Atlantic Marine*). He was assigned to work on board the vessel *British Valour* under contract for nine months, with a basic monthly salary of US$ 642.00.

The petitioner was a member of the Associated Marine Officers' and Seaman's Union of the Philippines (*AMOSUP*). AMOSUP had a collective bargaining agreement (*CBA*) with Atlantic Marine, represented in this case by Hammonia.

The petitioner left the Philippines on April 15, 2000 to rendezvous with his ship and to carry out therein his work as a pumpman. In August 2000, while attending to a defective hydraulic valve, he felt he was losing his vision. He complained to the Ship Captain that he was seeing black dots and hairy figures floating in front of his right eye. His condition developed into a gradual visual loss. The ship's medical log entered his condition as "internal bleeding in the eye" or "glaucoma."[4] He was given eye drops to treat his condition.

The petitioner went on furlough in Port Galveston, Texas and consulted a physician who diagnosed him to be suffering from "vitreal hemorrhage with small defined area of retinal traction. Differential diagnosis includes incomplete vitreal detachment ruptured macro aneurism and valsulva retinopathy."[5] He was

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[2] Penned by J. Vicente Q. Roxas, JJ. Portia Alino-Hormachuelos and Juan Q. Enriquez, Jr., concurring; *id.*, pp. 175-184.

[3] *Id.*, pp. 185-186.

[4] Petition, Annex "C", *id.*, p. 51.

[5] Petition, Annex "D", *id.*, p. 52.

advised to see an ophthalmologist when he returned home to the Philippines.

He was sent home on September 5, 2000 for medical treatment. The company-designated physician, Dr. Robert D. Lim of the Marine Medical Services of the Metropolitan Hospital, confirmed the correctness of the diagnosis at Port Galveston, Texas. Dr. Lim then referred the petitioner to an ophthalmologist at the Chinese General Hospital who subjected the petitioner's eye to focal laser treatment on November 13, 2000; vitrectomy with fluid gas exchange on December 7, 2000; and a second session of focal laser treatment on January 13, 2001.

On January 31, 2001, the ophthalmologist pronounced the petitioner fit to resume his seafaring duties per the report of Dr. Robert D. Lim, Medical Coordinator.[6] The petitioner then executed a "certificate of fitness for work" in the presence of Dr. Lim.[7] Claiming that he continued to experience gradual visual loss despite the treatment, he sought a second opinion from another ophthalmologist, Dr. Patrick Rey R. Echiverri, who was not a company-designated physician. Dr. Echiverri gave the opinion that the petitioner was not fit to work as a pumpman because the job could precipitate the resurgence of his former condition.

On March 20, 2001, the petitioner submitted himself to another examination, this time by Dr. Efren R. Vicaldo, a physician who was not also designated by the company. Dr. Vicaldo opined that although the petitioner was fit to work, he had a Grade X (20.15%) disability which he considered as permanent partial disability.

Armed with these two separate diagnoses, the petitioner demanded from his employer payment of disability and sickness benefits, pursuant to the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-going Vessels (*POEA Standard Employment Contract*), and the existing CBA

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[6] *Id.*, p. 249.

[7] *Id.*, p. 250.

in the company. The company did not heed his demand, prompting the petitioner to file a complaint for disability benefits, sickness allowance, damages and attorney's fees, docketed as NLRC NCR OFW Case No. (M) 01-050809-00.

On January 14, 2003, Labor Arbiter Madjayran H. Ajan rendered a decision in the petitioner's favor.[8] The Arbiter ordered Hammonia and Atlantic Marine to pay the petitioner, jointly and severally, sickness allowance of US$ 2,568.00 and disability benefits of US$ 60,000.00 under the CBA, and 10% of the monetary award in attorney's fees.

The respondents appealed to the National Labor Relations Commission (*NLRC*) which rendered a decision on March 19, 2004 reversing the Labor Arbiter's ruling.[9] It dismissed the complaint on the ground that the petitioner had been declared fit to resume sea duty and was not entitled to any disability benefit. By resolution, the NLRC denied the petitioner's motion for reconsideration.[10]

The petitioner thereafter sought relief from the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA dismissed the petition in a Decision promulgated on March 14, 2005,[11] and likewise denied the petitioner's motion for reconsideration.[12] Hence, the present petition.

THE PETITION

The petitioner contends that the CA erred in denying him disability benefits contrary to existing jurisprudence, particularly the ruling of this Court in *Crystal Shipping Inc., A/S Stein Line Bergen v. Deo P. Natividad*,[13] and, in strictly interpreting

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[8] *Id.,* pp. 102-110.

[9] NLRC Second Division, Comm. Angelita A. Gacutan, *ponente*, Comms. Raul T. Aquino and Victoriano B. Calaycay, concurring; *id.*, pp. 149-155.

[10] Promulgated on June 14, 2004; *id.*, pp. 157-158.

[11] *Supra* note 2.

[12] Promulgated on June 7, 2005; *supra* note 3.

[13] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

the POEA Standard Employment Contract and the CBA between the parties on the matter of who determines a seafarer's disability.

The petitioner particularly questions the CA decision for giving credit to the certification by the company-designated physician, Dr. Robert Lim, that declared him fit to work.[14] On the assumption that he was indeed fit to work, he submits that he should have been declared to be under permanent total disability because the fit-to-work declaration was made more than 120 days after he suffered his disability.

The petitioner laments that the CA accorded much weight to the company-designated physician's declaration that he was fit to work.[15] He considers this a strict and parochial interpretation of the POEA Standard Employment Contract and the CBA. While these documents provide that it is the company doctor who must certify a seafarer as permanently unfit for further sea service, this literal interpretation, to the petitioner, is absurd and contrary to public policy; its effect is to deny and deprive the ailing seaman of his basic right to seek immediate attention from any competent physician. He invokes in this regard our ruling in *German Marine Agencies, Inc. et al., v. National Labor Relations Commission.*[16]

In a different vein, the petitioner impugns the pronouncement of Dr. Robert Lim, the company-designated physician, that he was fit to resume sea duties as of January 31, 2001 since Dr. Lim did not personally operate on and attend to him when he was treated; he had been under the care of an ophthalmologist since September 6, 2000. The petitioner points out that there is nothing in the record to substantiate the correctness of Dr. Lim's certification; neither did the attending eye specialist issue any medical certification, progress report, diagnosis or prognosis on his eye condition that could be the basis of Dr. Lim's certification. The petitioner stresses that Dr. Lim's certification

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[14] *Supra* note 6.

[15] *Id*.

[16] G.R. No. 142049, January 30, 2001, 350 SCRA 629.

was not based on his first hand findings as it was issued in his capacity as the "Medical Coordinator" of the Metropolitan Hospital.[17] He also points out that Dr. Lim is not an eye specialist.

To the petitioner, it is the competence of the attending physician and not the circumstance of his being company-designated that should be the key consideration in determining the true status of the health of the patient/seaman. He seeks to rebut Dr. Lim's certification through the opinion of his private ophthalmologist, Dr. Patrick Rey R. Echiverri that "he would not advise him to do heavy work; he would not also be able to perform tasks that require very detailed binocular vision as the right eye's visual acuity could only be corrected to 20/30 and near vision to J3 at best."[18] The petitioner likewise relies on the assessment and evaluation of Dr. Efren R. Vicaldo that he suffers from partial permanent disability with a Grade X (20.15%) impediment and is now "unfit to work as a seaman."[19]

The petitioner disputes the respondent companies' claim that he is no longer disabled after his visual acuity had been restored to 20/20; it is fallacious because it views disability more in its medical sense rather than on its effect on the earning capacity of the seaman. Citing supporting jurisprudence, the petitioner posits that in disability compensation, it is the inability to work resulting in the impairment of one's earning capacity that is compensated, not the injury itself. He maintains that even if his visual acuity is now 20/20 as alleged by the company-designated physician, he can nevertheless no longer perform his customary work as pumpman on board an ocean-going vessel since the job involves a lot of strain that could again cause his vitreous hemorrhage. This limitation impairs his earning capacity so that he should be legally deemed to have suffered permanent total disability from a work-related injury. In this regard, the petitioner cites as well his union's CBA[20] whose paragraph 20.1.5 provides that:

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[17] *Supra* note 6.

[18] Annex "G", Petition; *rollo*, p. 55.

[19] Annex "H-1", Petition; *id.*, p. 57.

[20] Annex "B", Petition, pp. 29-50, 41.

> 20.1.5 Permanent Medical Unfitness — A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph is regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e.*, US$ 80,000 for officers and US$ 60,000 for ratings. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea services in any capacity by the company doctor, shall also be entitled to 100% compensation.

Finally, the petitioner contends that because there is doubt as to the accuracy of the medical opinion of the company-designated physician, the doubt should be resolved in his favor, citing *Sy v. Court of Appeals*,[21] as well as Article 4 of the Labor Code.[22]

THE CASE FOR RESPONDENTS

In a memorandum[23] filed on December 20, 2007, respondents Hammonia and Atlantic Marine entreat this Court to dismiss the petition under the following arguments:

1. The provisions of the POEA Standard Employment Contract and the CBA between the parties clearly provide that the assessment of the company-designated physician should be accorded respect.

2. There are no legal or factual bases for the petitioner's claim of total and permanent disability benefits as he was declared "fit to work."

3. The petitioner's reliance on the *Crystal Shipping v. Natividad*[24] case is misplaced.

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[21] G.R. No. 142293, February 27, 2003, 398 SCRA 301.

[22] Construction in favour of labor: — All doubts in the implementation and interpretation of the provisions of the Code, including its implementing rules and regulations, shall be resolved in favour of labor.

[23] *Rollo*, pp. 566-586.

[24] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

4. The petitioner is not entitled to attorney's fees.

The respondents anchor their case on their compliance with the law and the existing CBA as applied to the petitioner's circumstances.

They point out that upon the petitioner's repatriation, he was immediately referred to an ophthalmologist who scheduled him for observation and regular monitoring preparatory to possible vitrectomy. He was prescribed medication in the meantime.

On November 13, 2000, the petitioner underwent laser treatment of the right eye, which he tolerated well. His vitrectomy, scheduled on November 22, 2000, was deferred because he was noted to have accentuated bronchovascular marking on his chest x-ray, and mild chronic obstructive pulmonary disease as revealed by his pulmonary function test. He was given medication for his condition and was advised to stop smoking.

The petitioner was cleared for surgery on November 29, 2000. He underwent vitrectomy with fluid gas exchange and focal laser treatment of his affected eye on December 7, 2000. He tolerated the procedure well. His condition stabilized and he was discharged for management as an outpatient on December 9, 2000.

On December 13, 2000, the petitioner's vision was 20/40 (r) and 20/20 (l) with correction and slight congestion observed in his right eye. His vision improved to 20/25 (r) and 20/20 (l) by December 20, 2000 although a substantial lesion was observed and contained by laser markings. This remained constant and by January 11, 2001, no sign of vitreous hemorrhage was noted on fundoscopy.

On January 13, 2001, petitioner underwent his second session of laser treatment and he again tolerated the procedure well. By January 31, 2001, his visual acuity was improved to 20/20 for both eyes, with correction. He was prescribed eyeglasses and was found fit to resume his sea duties. The petitioner executed a certificate of fitness for work under oath, witnessed by Dr. Robert Lim, the company-designated physician who had declared

the petitioner fit to work based on the opinion of the handling eye specialist.[25]

The respondents anchor their objection to the grant of disability benefits on Dr. Lim's certification. They dispute the petitioner's contention that the medical certifications and assessments by the petitioner's private physicians — Dr. Echiverri and Dr. Vicaldo — should prevail.

The respondents object particularly to the petitioner's claim that Dr. Lim's assessment is not authoritative because "Dr. Lim does not appear to be an eye specialist."[26] They point out that the issue of Dr. Lim's qualifications and competence was never raised at any level of the arbitration proceedings, and, therefore, should not be entertained at this stage of review. They submit that if the petitioner truly believed that the company-designated physician was incompetent, he should have raised the matter at the earliest possible opportunity, or at the time he accepted Dr. Lim's assessment. On the contrary, they point out that the petitioner concurred with the assessment of the company-designated physician by executing a certificate of fitness to work.[27]

The respondents likewise question the petitioner's reliance on Art. 20.1.5 of the CBA for his claim that he is entitled to 100% disability compensation since his doctors, Echiverri and Vicaldo, declared him unfit to work as a seaman although his disability was determined to be only at Grade X (20.15%), a partial permanent disability. They contend that the petitioner's position is contrary to what the cited provision provides as the CBA[28] specifically requires a "company doctor" to certify a seafarer as permanently unfit for service in any capacity.

The respondents bewail the petitioner's attempt to have this Court find him permanently disabled because he "was under

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[25] *Supra* note 6.

[26] Petition, p. 21.

[27] *Supra* note 7.

[28] Article 20.1.4.2.

the medication and care of the company-designated physician for over four (4) months or more than 120 days." They cite Section 20 B of petitioner's POEA Standard Employment Contract whose relevant portion states:[29]

> 3. Upon sign-off from vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> x x x x x x x x x
>
> In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract.

The respondents then point out that Section 30 provides a schedule of disability for injuries, disease or illness contracted. Any item in the schedule classified under Grade I constitutes total and permanent disability entitled to a disability allowance equivalent to US$60,000 (US$50,000 x 120%). They consider reliance on this Court's ruling in *Crystal Shipping v. Natividad;*[30] *Government Service Insurance System v. Cadiz*;[31] and *Ijares v. Court of Appeals*,[32] to be misplaced with respect to the advocated conversion of the petitioner's medical condition from temporary to permanent disability.

The respondents stress that in the present case, the petitioner had been accorded the necessary medical treatment, including laser treatment by company-designated physicians, that restored his visual acuity to 20/20. He was declared fit to work upon his return to the full possession of all his physical and mental faculties and after he was cleared of all impediments. They contend as well that all that the petitioner could present in support of his

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[29] Respondent's Memorandum, pp. 12-13; *rollo*, pp. 577-578.

[30] *Supra* note 24.

[31] G.R. No. 154093, July 8, 2003, 405 SCRA 450.

[32] G.R. No. 105521, August 26, 1999, 313 SCRA 141.

claim for total permanent disability was the Grade X disability assessment issued by his private physician, Dr. Vicaldo, that he is "now unfit to work as seaman." They point out that Dr. Vicaldo himself is not an "eye specialist."

Finally, the respondents insist that neither factual nor legal basis exists for petitioner's claim of Grade I total and permanent disability benefits. Factually, the petitioner was declared fit to work by the company-designated physician. Legally, only blindness or total and permanent loss of vision of both eyes is considered a Grade I disability under the terms of the POEA Standard Employment Contract. Under its Section 30 on the portion on "Eyes," only total and permanent loss of vision of both eyes can be considered as Grade I disability, not the petitioner's claimed impairment of vision in the right eye.

THE COURT'S RULING

We find no merit in the petition.

The Governing Law and Rules.

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other.

By way of background, the Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels.[33]

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[33] Section 20 [B]. *Compensation and Benefits for Injury or Illness*

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1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seamen.

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2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time as he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

A notable feature of the POEA Standard Employment Contract is Section 31 — its provision on the Applicable Law. It provides:

> Any unresolved dispute, claim or grievance arising out of or in connection with this Contract, including the annexes shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and convenants where the Philippines is a signatory.

Through this provision, the DOLE skirted any possible issue regarding the law that should govern the terms and conditions of employment of Filipino seamen working in ocean-going vessels that have no significant Philippine presence and that hardly see Philippine waters. Thus, with the POEA Standard Employment Contract, there is no doubt that in case of *any unresolved dispute, claim or grievance arising out of or in connection with the contract*, Philippine laws shall apply.

In real terms, this means that the shipowner — an employer operating outside Philippine jurisdiction — does not subject

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C. It is understood that computation of the total permanent or partial disability of the seafarer caused by the injury sustained resulting from warlike activities within the warzone area shall be based on the compensation rate payable within the warzone area as prescribed in this Contract.

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or international breach of his duties, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

F. When requested, the principal shall furnish the seafarer a copy of all pertinent medical reports or any records at no cost to the seafarer.

G. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

itself to Philippine laws, except to the extent that it concedes the coverage and application of these laws under the POEA Standard Employment Contract. On the matter of disability, the employer is not subject to Philippine jurisdiction in terms of being compelled to contribute to the State Insurance Fund that, under the Labor Code, Philippine employers are obliged to support. (This Fund, administered by the Employees' Compensation Commission, is the source of work-related compensation payments for work-related deaths, injuries, and illnesses.) Instead, the POEA Standard Employment Contract provides its own system of disability compensation that approximates (and even exceeds) the benefits provided under Philippine law.[34] The standard terms agreed upon, as above pointed out, are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:

> x x x The following disabilities shall be deemed **total and permanent**:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules**;
>
> x x x x x x x x x

The rule referred to — Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states:

> Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case **benefit for temporary total disability** shall be paid. However, the System may declare the total and permanent status at

[34] *Id.,* Section 20 [B] (3).

anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Underscoring ours]

These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment.[35] For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work.[36] He receives his basic wage during this period[37] until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws.[38] If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[39] The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

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[35] *Ibid.*

[36] Pursuant to Article 192(c)(1), Labor Code.

[37] Pursuant to Section 20[B](3), POEA Standard Employment Contract.

[38] Pursuant to Rule X, Section 2, Rules and Regulations Implementing Book IV of the Labor Code.

[39] *Id.*

Thus, upon petitioner's return to the country for medical treatment, both he and the respondent company acted correctly in accordance with the terms of the POEA Standard Employment Contract and the CBA; he reported to the company-designated doctor for treatment and the latter properly referred him to an ophthalmologist at the Chinese General Hospital. No dispute existed on the medical treatment the petitioner received, to the point that the petitioner executed a "certificate of fitness for work" based on the assessment/certification by the company-designated physician.

Problems only arose when despite the certification, the petitioner sought second and third opinions from his own doctors, one of whom opined that he could no longer resume work as a pumpman while the other recognized a Grade X (20.15%) partial permanent disability. Based on these opinions, the petitioner demanded that he be paid disability and sickness benefits; when the company refused, the demand metamorphosed into an actual case before the NLRC Arbitration Branch.

As we outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.

A twist that directly led to the filing of this case is the issue of whose medical pronouncement should be followed given that the company-designated physician had declared the petitioner

fit for work with a certification of fitness duly executed by the latter, while the petitioner's physicians gave qualified opinions on his medical situation.

The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.[40]

Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. We do so mindful that the company had exerted real effort to provide the petitioner with medical assistance, such that the petitioner finally ended with a 20/20 vision. The company-designated physician, too, monitored the petitioner's case from the beginning and we cannot simply throw out his certification, as the petitioner suggested, because he has no expertise in ophthalmology. Under the facts of this case, it was the company-designated doctor who referred the petitioner's case to the proper medical specialist whose medical results are not essentially disputed; who monitored the petitioner's case during its progress; and who issued his certification on the basis of the medical records available and the results obtained. This led the NLRC in its own ruling to note that:

> x x x more weight should be given to the assessment of degree of disability made by the company doctors because they were the ones who attended and treated petitioner Vergara for a period of almost five (5) months from the time of his repatriation to the Philippines on September 5, 2000 to the time of his declaration as fit to resume

[40] *Supra* note 34.

sea duties on January 31, 2001, and they were privy to petitioner Vergara's case from the very beginning, which enabled the company-designated doctors to acquire a detailed knowledge and familiarity with petitioner Vergara's medical condition which thus enabled them to reach a more accurate evaluation of the degree of any disability which petitioner Vergara might have sustained. These are not mere company doctors. These doctors are independent medical practitioners who passed the rigorous requirements of the employer and are more likely to protect the interest of the employer against fraud.

Moreover, as between those who had actually attended to petitioner Vergara throughout the duration of his illness and those who had merely examined him later upon his recovery for the purpose of determining disability benefits, the former must prevail.

We note, too, as the respondent company aptly observed, that the petitioner never raised the issue of the company-designated doctor's competence at any level of the arbitration proceedings, only at this level of review. On the contrary, the petitioner accepted his assessment of fitness and in fact issued a certification to this effect. Under these circumstances, we find the NLRC and the CA's conclusions on the petitioner's fitness to work, based on the assessment/certification by the company-designated physician, to be legally and factually in order.

As a last point, the petitioner has repeatedly invoked our ruling in *Crystal Shipping, Inc. v. Natividad*,[41] apparently for its statement that the respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.

Crystal Shipping was a case where the seafarer was completely unable to work for **three years** and was undisputably unfit for sea duty "due to respondent's need for regular medical check-

[41] *Supra* note 24.

up and treatment which would not be available if he were at sea."[42] While the case was not clear on how the initial 120-day and subsequent temporary total disability period operated, **what appears clear is that the disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability was called for, fully in accordance with the operation of the period for entitlement that we described above.** Viewed from this perspective, the petitioner cannot cite the *Crystal Shipping* ruling as basis for his claim for permanent total disability.

Additionally and to reiterate what we pointed out above regarding the governing rules that affect the disability of Filipino seafarers in ocean-going vessels, the POEA Standard Employment Contract provides its own Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted (Section 32); Disability Allowances (a subpart of Section 32); and its own guidelines on Occupational Diseases (Section 32-A) which cannot be disregarded in considering disability compensation and benefits. All these — read in relation with applicable Philippine laws and rules — should also be taken into account in considering and citing *Crystal Shipping* and its related line of cases as authorities.

In light of the above conclusions, we see no need to discuss the petitioner's other submissions that the lack of disability has rendered moot, particularly the existence of doubt that the petitioner insists should be resolved in his favor.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit.

SO ORDERED.

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

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[42] *Id.,* p. 568.

THIRD DIVISION

[G.R. No. 173454. October 6, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **MEGA PRIME REALTY AND HOLDINGS CORPORATION,** *respondent.*

[G.R. No. 173456. October 6, 2008]

MEGA PRIME REALTY AND HOLDINGS CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY ALLEGING FRAUD OR MISTAKE IN A TRANSACTION BEARS THE BURDEN OF PROOF. — Well-settled is the rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that it be established by clear and convincing evidence. Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that "a person is innocent of crime or wrong" and that "private transactions have been fair and regular." While disputable, these presumptions can be overcome only by clear and preponderant evidence. Applied to contracts, the presumption is in favor of validity and regularity.

2. CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; A PERSON DEALING WITH REGISTERED LAND HAS A RIGHT TO RELY ON THE TORRENS CERTIFICATE; EXCEPTION. — The general rule is that a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of making further inquiries. This rule, however, admits of exceptions: when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the

purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.

3. MERCANTILE LAW; CORPORATIONS; A CORPORATION HAS A DISTINCT AND SEPARATE PERSONALITY FROM ITS INDIVIDUAL STOCKHOLDERS OR MEMBERS; EXCEPTION. — *The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity*. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. Courts may, however, in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate fiction.

4. ID.; ID.; PIERCING THE VEIL OF CORPORATE FICTION; WHEN PROPER. — The following circumstances are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation and whether piercing of the corporate veil is proper: (a) The parent corporation owns all or most of the capital stock of the subsidiary. (b) The parent and subsidiary corporations have common directors or officers. (c) The parent corporation finances the subsidiary. (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation. (e) The subsidiary has grossly inadequate capital. (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary. (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation. (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own. (i) The parent corporation uses the property of the subsidiary as its own. (j) The directors or executives of the subsidiary do not act independently in the

interest of the subsidiary, but take their orders from the parent corporation. (k) The formal legal requirements of the subsidiary are not observed.

5. CIVIL LAW; SPECIAL CONTRACTS; SALES; DEED OF SALE; NATURE THEREOF, EXPLAINED. — Third, it is significant to note that the deed of sale is a public document duly notarized and acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it 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. Thus, it has long been settled that a public document executed and attested through the intervention of the notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant. The evidentiary value of a notarial document guaranteed by public attestation in accordance with law must be sustained in full force and effect unless impugned by strong, complete and conclusive proof.

6. ID.; ID.; ID.; CONTRACT OF SALE; EFFECT THEREOF AS A FORCE OF LAW BETWEEN THE PARTIES; EXPLAINED. — The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments, not weasel out of them. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.

7. ID.; ID.; ID.; ID.; FAILURE OF THE SELLER TO EFFECT CHANGE IN OWNERSHIP AMOUNTS TO A HIDDEN DEFECT OF CONTRACT; SUSTAINED. — Verily, an important sense of the deed of sale is the transfer of ownership over the subject properties to Mega Prime. Clearly, the failure of the seller PNB to effect a change in ownership of the subject properties amounts to a hidden defect within the contemplation of Articles 1547 and 1561 of the New Civil Code. The said provisions of law read: Art. 1547. In a contract of sale, unless

a contrary intention appears, there is: (1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing; (2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer. This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest. x x x Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them. Up to now, the title of the said property is still under the name of the former registered owner Marcris Realty Corporation. Mega Prime's subsequent discovery that the property covered by TCT No. 160740 is covered by a title pertaining to the City Government of Quezon City coupled with PNB's inability up to the present to submit a title in the name of PNB-Madecor constitutes a breach of warranty. Hence, a proportionate reduction in the consideration of the sale is justified, applying the Civil Code principle that "no person shall be enriched at the expense of another."

APPEARANCES OF COUNSEL

AMC Santiago Law Office for Mega Prime Realty and Holdings Corp.

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D E C I S I O N

REYES, R.T., *J.*:

IN sales of realty, a breach in the warranties of the seller entitles the buyer to a proportionate reduction of the purchase price.

The principle is illustrated in these consolidated petitions for review on *certiorari* of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 66759, which reversed and set aside that of the Regional Trial Court (RTC) in Malabon City. Earlier, the RTC invalidated the sale of shares of stock in PNB Management and Development Corporation (PNB-Madecor) by and between Mega Prime Realty Corporation (Mega Prime), as vendee, and the Philippine National Bank (PNB), as vendor.

The Facts

The facts, as summarized by the appellate court, are as follows:

Mega Prime filed a complaint for annulment of contract before the RTC of Malabon on November 28, 1997. An amended complaint was subsequently filed on February 17, 1998.

In its amended complaint, Mega Prime alleged, among others, that PNB operates a subsidiary by the name of PNB Management and Development Corporation. In line with PNB's privatization plan, it opted to sell or dispose of all its stockholdings over PNB-Madecor to Mega Prime. Thereafter, a deed of sale dated September 27, 1996 was executed between PNB (as vendor) and Mega Prime (as vendee) whereby PNB sold, transferred and conveyed to Mega Prime, on "As is where is" basis, all of its stockholdings in PNB-Madecor for the sum of Five Hundred Five Million Six Hundred Twenty Thousand Pesos (₱505,620,000.00). The pertinent portions of the deed of sale are hereunder quoted as follows:

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[1] *Rollo* (G.R. No. 173454), pp. 30-50. Dated January 27, 2006. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring.

[2] *Id.* at 52-54. Dated July 5, 2006.

WHEREAS, PNB Management and Development Corporation (PNB-MADECOR), a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at PNB Financial Center, Roxas Boulevard, Pasay City, Metro Manila, is a wholly-owned subsidiary of the vendor;

WHEREAS, the Vendee has offered to buy all of the stockholdings of the Vendor in PNB-MADECOR with an authorized capital stock of ₱250,000,000.00 and the Vendor has accepted the said offer;

WHEREAS, the parties have previously agreed for the Vendee to pay the Vendor the purchase price of all the said stockholdings of the Vendor, as follows:

(i) ₱50,562,000.00 on or before July 18, 1996 which has been paid;
(ii) ₱50,562,000.00 on or before September 27, 1996; and
(iii) Balance of the purchase price through loan with the Vendor;

subject to the condition that if the Vendee fails to pay the second installment, the agreement to sell the said stockholdings will be cancelled and the initial 10% down payment will be forfeited in favor of the Vendor;

NOW, THEREFORE, for and in consideration of the foregoing premises and the sum of PHILIPPINE PESOS: FIVE HUNDRED FIVE MILLION SIX HUNDRED TWENTY (₱505,620,000.00), receipt of which in full is hereby acknowledged, the Vendor hereby sells, transfers and conveys, on "As is where is" basis, unto and in favor of the Vendee, its assigns and successors-in-interest, all of the Vendor's stockholdings in PNB-MADECOR, free from any liens and encumbrances, as evidenced by the following Certificates of Stock (the "Certificates of Stock"):

Number	No. of Shares
0010	313,871
0002	1
0003	1
0004	1
0005	1
0006	1
0008	1
0009	1

0012	1
0013	1

hereto attached as Annex "A", and any subscription rights thereto, subject to the following terms and conditions:

1. The sale of the above stockholdings of the Vendor is on a clean balance sheet, *i.e.* all assets and liabilities are squared, and no deposits, furniture, fixtures and equipment, including receivables shall be transferred to the Vendee, except real properties and improvements thereon of PNB-MADECOR in Quezon City containing an area of 19,080 sq. m., situated at the corner of Quezon Boulevard (presently Quezon Avenue) and Roosevelt Avenue covered by five (5) titles, namely: TCT Nos. 87881, 87882, 87883, 87884, and 160470, per Annexes "B", "C", "D", "E", and "F" hereof.

Leasehold rights of the Vendor on the Numancia property are excluded from this sale, however, lease of the Mandy Enterprises and sub-leases thereon shall be honored by the Vendor which shall become the sub-lessor of the said property. x x x

Pursuant, therefore, to the terms of the above-quoted deed of sale, the parties also entered into a loan agreement on the same date (September 27, 1996) for ₱404,496,000.00 and Mega Prime executed in favor of PNB a promissory note for the ₱404,496,000.00.

Mega Prime further alleged that one of the principal inducements for it to purchase the stockholdings of defendant PNB in PNB-Madecor was to acquire assets of PNB-Madecor, specifically the 19,080 square-meter property located at the corner of Quezon Avenue and Roosevelt Avenue referred to as the Pantranco property.

Mega Prime then entered into a joint venture to develop the Pantranco property. However, Mega Prime's joint venture partner pulled out of the agreement when it learned that the property covered by Transfer Certificate of Title (TCT) No. 160470 was likewise the subject matter of another title registered in the name of the City Government of Quezon City (TCT No. RT-9987 [266573]). Moreover, the lot plan of the Pantranco property shows that TCT No. 160470 covers real property located right in the middle of the Pantranco property rendering nugatory the plans set up by Mega Prime for the said property.

Mega Prime sought the annulment of the deed of sale on ground that PNB misrepresented that among the assets to be acquired by Mega Prime from the sale of shares of stock was the property covered by TCT No. 160470. However, the subject property was outside the commerce of man, the same being a road owned by the Quezon City Government.

Mega Prime also sought reimbursement of the ₱150,000,000.00 plus legal interest incurred by Mega Prime as expenses for the development of the Pantranco property as actual damages and further sought moral and exemplary damages and attorney's fees.

In its answer to the amended complaint, PNB maintains that the subject matter of the deed of sale was PNB's shares of stock in PNB-Madecor which is a separate juridical entity, and not the properties owned by the latter as evidenced by the deed itself. The sale of PNB's shares of stock in PNB-Madecor to Mega Prime did not dissolve PNB-Madecor. PNB only transferred its control over PNB-Madecor to Mega Prime. The real properties of PNB-Madecor did not change ownership, but remained owned by PNB-Madecor. Moreover, PNB denied that it is liable for ₱150,000,000.00 allegedly incurred by Mega Prime for the development of the Pantranco property since Mega Prime itself alleged in its amended complaint that no such development could be undertaken.

According to PNB, Mega Prime's accusation that there was fraudulent misrepresentation on the former's part is without basis. The best evidence of their transaction is the subject deed of sale which clearly shows that what PNB sold to Mega Prime was PNB's stockholdings in PNB-Madecor.

As stockholder of PNB-Madecor, PNB did not know nor was it in a position to know, that the Quezon City Government was able to secure another title over the lot covered by TCT No. 160470. Mega Prime, as buyer, bought the shares of stock at its own risk under the *caveat emptor* rule, more so considering that the sale was made on an "as is where is" basis. Moreover, the fact that the Quezon City Government was able to secure a title over the same lot does not necessarily mean that PNB-Madecor's title to it is void or outside the commerce of man. Only a proper proceeding may determine which of the two (2) titles should prevail over the other. Mega Prime, now as the controlling stockholder of PNB-Madecor, should have instead filed action to quiet PNB-Madecor's title over the said lot.[3]

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[3] *Id.* at 32-35.

RTC and CA Dispositions

On December 21, 1999, the RTC gave judgment in favor of Mega Prime and against PNB. The *fallo* of the RTC decision states:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, as follows:
>
> (1) Declaring the Deed of Sale of 27 September 1996 as void and rescinded;
>
> (2) Ordering the defendant PNB to reimburse plaintiff the legal interest on the amount of ONE HUNDRED FIFTY MILLION PESOS (₱150,000,000.00) loan intended by plaintiff in developing the Pantranco properties, as actual damages;
>
> (3) Ordering defendant PNB to pay plaintiff the sum of FIVE MILLION PESOS (₱5,000,000.00) as exemplary damages;
>
> (4) Ordering defendant PNB to pay plaintiff the sum of ONE HUNDRED THOUSAND PESOS (₱100,000.00) as attorney's fees;
>
> (5) Ordering defendant to restore to plaintiff the sum of ONE HUNDRED ONE MILLION ONE HUNDRED TWENTY-FOUR THOUSAND PESOS (₱101,124,000.00) representing the sum actually paid by plaintiff under the subject contract of sale with legal interest thereon reckoned from the date of extra judicial demand made by plaintiff;
>
> (6) Ordering plaintiff to return the five properties covered by T.C.T. Nos. 87881, 87882, 87883, 87884 and 160470 in favor of the defendant under the principle of mutual restitution;
>
> (7) Ordering plaintiff to return the stockholdings subject matter of the 27 September 1996 contract of sale in favor of defendant;
>
> (8) Ordering defendant to pay the costs of suit.
>
> SO ORDERED.[4]

PNB elevated the matter to the CA *via* Rule 41 of the 1997 Rules of Civil Procedure. In its appeal, PNB contended, *inter alia*, that what was sold to Mega Prime were the bank's shares

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

of stock in PNB-Madecor, a corporation separate and distinct from PNB; that the Pantranco property was never a consideration in the contract of sale; that Mega Prime is presumed to have undertaken due diligence in ascertaining the ownership of the disputed property, it being a reputable real estate company.

Further, PNB claimed that Mega Prime bought its shares of stock at its own risk under the *caveat emptor* rule, as the sale was on an "*as is where is*" basis. That the Quezon City Government was able to secure title over the same lot does not necessarily mean that PNB-Madecor's title to it was void or outside the commerce of man. According to PNB, Mega Prime's remedy, as the new controlling owner of PNB-Madecor, is to file an action for quieting of its title to the questioned lot.

On January 27, 2006, the CA reversed and nullified the RTC ruling, disposing as follows:

> WHEREFORE, based on the above premises, the assailed Decision dated 21 December 1999 of the Regional Trial Court of Malabon, Metro Manila, Branch 72, is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the complaint in Civil Case No. 2793-MN. The counterclaim of PNB is likewise DISMISSED.
>
> SO ORDERED.[5]

Both parties moved for reconsideration of the CA decision. Both motions were, however, denied with finality on July 5, 2006.[6]

Hence, the present recourse by both PNB and Mega Prime.

PNB first filed its petition for review, docketed as G.R. No. 173454, assailing only the CA's dismissal of its counterclaim. In its separate petition for review, docketed as G.R. No. 173456, Mega Prime challenged the reversal by the CA of the RTC decision.

Issues

PNB assigns solely that the CA committed a grave error, giving rise to a question of law, in concluding that Mega Prime's

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[5] *Id.* at 49.

[6] *Id.* at 52-54.

complaint was not a mere ploy to prevent the foreclosure of the pledge and in dismissing PNB's counterclaim, ignoring the documentary evidence proving that Mega Prime's complaint was intended to preempt the foreclosure of the pledge and evade payment of its ₱404,496,000.00 overdue debt.

For its part, Mega Prime submits that the CA erred in ruling that Mega Prime did not have sufficient grounds to have the deed of sale dated September 27, 1996 annulled.

Stripped to its bare essentials, the Court is tasked to resolve the following questions:

A. Are there grounds for the annulment of the deed of sale between PNB and Mega Prime? and

B. Are PNB and Mega Prime entitled to the damages they respectively claim against each other?

Our Ruling

A. There is no sufficient ground to annul the deed of sale.

There is no basis for a finding of fraud against PNB to invalidate the sale. A perusal of the deed of sale reveals that the sale principally involves the entire shareholdings of PNB in PNB-Madecor, not the properties covered by TCT Nos. 87881, 87882, 87883, 87884 and 160740. Any defect in any of the said titles should not, therefore, affect the entire sale. Further, there is no evidence that PNB was aware of the existence of another title on one of the properties covered by TCT No. 160740 in the name of the Quezon City government before and during the execution of the deed of sale.

Although it is expressly stated in the deed of sale that the transfer of the entire stockholdings of PNB in PNB-Madecor will effectively result in the transfer of the said properties, the discovery of the title under the name of the Quezon City government does not substantially affect the integrity of the object of the sale. This is so because TCT No. 160740 covers only 733.70 square meters of the entire Pantranco property which has a total area of 19,080 square meters.

We quote with approval the CA observations along this line:

Well-settled is the rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that it be established by clear and convincing evidence.

Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that "a person is innocent of crime or wrong" and that "private transactions have been fair and regular." While disputable, these presumptions can be overcome only by clear and preponderant evidence. Applied to contracts, the presumption is in favor of validity and regularity.

In this case, it cannot be said that Mega Prime was able to adduce a preponderance of evidence before the trial court to show that PNB fraudulently misrepresented that it had title or authority to sell the property covered by TCT No. 160470. Nor was Mega Prime able to satisfactorily show that PNB should be held liable for damages allegedly sustained by it.

First, PNB correctly argued that with Mega Prime as a corporation principally engaged in real estate business it is presumed to be experienced in its business and it is assumed that it made the proper appraisal and examination of the properties it would acquire from the sale of shares of stock. In fact, Mega Prime was given copies of the titles to the properties which were attached to the subject deed of sale. In other words, there was full disclosure on the part of PNB of the status of the properties of PNB-Madecor to be transferred to Mega Prime by reason of its purchase of all of PNB's shareholdings in PNB-Madecor.

The general rule is that a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of making further inquiries. This rule, however, admits of exceptions: when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.

A perusal of TCT No. 160470 would show that the property is registered under the name Marcris Realty Corporation and not under PNB or PNB-Madecor, the alleged owner of the said property. Moreover, TCT No. 160470 explicitly shows on its face that it covers a road lot.

This fact notwithstanding, Mega Prime still opted to buy PNB's shares of stock, investing millions of pesos on the said purchase. Mega Prime cannot therefore claim that it can rely on the face of the title when the same is neither registered under the name of PNB, the vendor of the shares of stock in PNB-Madecor, nor of PNB-Madecor, the alleged owner of the property. This should have forewarned Mega Prime to inquire further into the ownership of PNB-Madecor with respect to TCT No. 160470. And it should not be heard to complain that the property covered by TCT No. 160470 is outside the commerce of man, it being a road, since this fact is evident on the face of TCT No. 160470 itself which describes the property it covers as a road lot.

If, indeed, the principal inducement for Mega Prime to buy PNB's shares of stock in PNB-Madecor was the acquisition of the said properties, Mega Prime should have insisted on putting in writing, whether in the same deed of sale or in a separate agreement, any condition or understanding of the parties regarding the transfer of titles from PNB-Madecor to Mega Prime. In buying the shares of stock with notice of the flaw in the certificate of title of PNB-Madecor, Mega Prime assumed the risks that may attach to the said purchase or said investment. Clearly, under the deed of sale, Mega Prime purchased the shares of stock of PNB in PNB-Madecor on an "as is where is" basis, which should give Mega Prime more reason to investigate and look deeper into the titles of PNB-Madecor.

Second, Mega Prime's remedy is not with PNB. It must be stressed that PNB only sold its shares of stock in PNB-Madecor which remains to be the owner of the lot in question. Although, admittedly, PNB-Madecor is a subsidiary of PNB, this does not necessarily mean that PNB and PNB-Madecor are one and the same corporation.

The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. Courts may, however, in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate fiction.

The following circumstances are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation and whether piercing of the corporate veil is proper:

(a) The parent corporation owns all or most of the capital stock of the subsidiary.
(b) The parent and subsidiary corporations have common directors or officers.
(c) The parent corporation finances the subsidiary.
(d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
(e) The subsidiary has grossly inadequate capital.
(f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
(g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.
(h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
(i) The parent corporation uses the property of the subsidiary as its own.
(j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation.
(k) The formal legal requirements of the subsidiary are not observed.

Aside from the fact that PNB-Madecor is a wholly-owned subsidiary of PNB, there are no other factors shown to indicate that PNB-Madecor is a mere instrumentality of PNB. Therefore, PNB's separate personality cannot be merged with PNB-Madecor in the absence of sufficient ground to pierce the veil of corporate fiction. It must be noted that at the outset, PNB presented to Mega Prime the titles to the properties. With the exception of one (1) title, TCT No. 160470,

the four (4) titles are registered under PNB-Madecor's name and not PNB. PNB correctly observed that Mega Prime's remedy is not to go after PNB who merely sold its shares of stock in PNB-Madecor but to file the appropriate action to remove any cloud in PNB-Madecor's title over TCT No. 160470.

Third, it is significant to note that the deed of sale is a public document duly notarized and acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it 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. Thus,

> It has long been settled that a public document executed and attested through the intervention of the notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant. The evidentiary value of a notarial document guaranteed by public attestation in accordance with law must be sustained in full force and effect unless impugned by strong, complete and conclusive proof.

Based on the above arguments, there is no reason to annul the said deed considering that both parties freely and fairly entered into the said contract presumptively knowing the consequences of their acts.

Lastly, Mega Prime, using its business judgment, entered into a sale transaction with PNB respecting shares of stock in PNB-Madecor, in anticipation of owning properties owned by PNB-Madecor. However, it was found out later that a title in the name of the Quezon City Government casts a cloud over PNB-Madecor's title to the so-called Pantranco Properties. This fact alone cannot justify annulment of a valid and consummated contract of sale. Mega Prime cannot be relieved from its obligation, voluntarily assumed, under the said contract simply because the contract turned out to be a poor business judgment or unwise investment. It should have been more prudent or careful in making such a huge investment worth millions of pesos. It should have conducted its own due diligence, so to speak. By signing the deed of sale, Mega Prime accepted the risk of an "as is where is" arrangement with respect to the sale of shares of stock therein.

The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments, not weasel out of them. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.

Contrary to the trial court's finding, We find that there is no sufficient basis to annul the Deed of Sale dated 27 September 1996. Mega Prime failed to sufficiently prove that PNB was guilty of misrepresentation or fraud with respect to the said transaction.[7]

Nevertheless, the Court holds that there was a breach in the warranties of the seller PNB. Resultantly, a reduction in the sale price should be decreed.

One of the express conditions in the deed of sale is the transfer of the properties under TCT Nos. 87881, 87882, 87883, 87884 and 160740 in the name of Mega Prime:

1. The Sale of the above stockholdings of the vendor is on a clean balance sheet, *i.e.*, all assets and liabilities are squared, and no deposits, furniture, fixtures and equipment, including receivables shall be transferred to the vendee, except real properties and improvements thereon of PNB-Madecor in Quezon City containing an area of 19,080 sq. m., situated at the corner of Quezon Boulevard (presently Quezon Avenue) and Roosevelt Avenue covered by five (5) titles namely: TCT Nos. 87881, 87882, 87883, 87884, and 160470 x x x.[8]

Verily, an important sense of the deed of sale is the transfer of ownership over the subject properties to Mega Prime. Clearly, the failure of the seller PNB to effect a change in ownership of the subject properties amounts to a hidden defect within the contemplation of Articles 1547 and 1561 of the New Civil Code.

The said provisions of law read:

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[7] *Id.* at 42-47.

[8] *Id.* at 8.

Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest.[9]

x x x x x x x x x

Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them.[10]

Up to now, the title of the said property is still under the name of the former registered owner Marcris Realty Corporation. Mega Prime's subsequent discovery that the property covered by TCT No. 160740 is covered by a title pertaining to the City Government of Quezon City coupled with PNB's inability up to the present to submit a title in the name of PNB-Madecor constitutes a breach of warranty. Hence, a proportionate reduction in the consideration of the sale is justified, applying the Civil Code principle that "no person shall be enriched at the expense of another."[11]

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[9] New Civil Code, Art. 1547.

[10] *Id.*, Art. 1561.

[11] *Id.*, Art. 22.

The sale of shares of stock was undertaken to effect the transfer of the subject properties with a total area of 19,080 square meters. When PNB failed to deliver the title to the property covered by TCT No. 160740, with an area of 733.70 square meters, PNB violated an express warranty under the deed of sale. Thus, the total consideration in the Deed of Sale should be proportionately reduced equivalent to the value of the property covered by TCT No. 160740.

Records bear out that the total consideration for the sale contract is ₱505,620,000.00. The object is the 19,080-square-meter Pantranco property. Simple division or mathematical computation yields that the property has a value of ₱26,500.00 per square meter. Considering that the area covered by TCT No. 160740 is 733.70 square meters, the purchase price should be proportionately reduced by ₱19,443,050.00, an amount arrived at after multiplying ₱26,500.00 by 733.70 or vice versa.

Necessarily, Mega Prime cannot be considered in default with respect to its obligation to petitioner bank in view of the modification of the stipulated consideration.

B. **As to the parties' claims of damages against each other, the Court fully agrees with the CA that both should be dismissed for lack of factual and legal bases**.

The CA refused to award actual and exemplary damages to Mega Prime. Said the appellate court:

> Necessarily, therefore, PNB cannot be made liable for actual damages allegedly sustained by Mega Prime. The latter's allegation that it incurred expenses for the development of the Pantranco Property in the amount of ₱150,000,000.00 deserves scant consideration.
>
> Basic is the jurisprudential principle that in determining actual damages, the courts cannot rely on mere assertions, speculations, conjectures, or guesswork but must depend on competent proof or the best obtainable evidence of the actual amount of loss.
>
> Aside from the site development plan adduced by Mega Prime, no other proof was presented by Mega Prime to show that it had incurred expenses for the development of the Pantranco property.

In fact, Mega Prime itself alleged that its partner pulled out from the project and the development of the Pantranco Property could not be undertaken after knowledge of the alleged defective title of PNB-Madecor. Without sufficient proof that Mega Prime incurred said expenses and that it was due to PNB's fault, then the latter cannot be held liable for such unsupported allegation.

Regarding the award of exemplary damages, the Court likewise finds that PNB cannot be made liable for exemplary damages and attorney's fees, there being no adequate proof to show that PNB was in bad faith when it entered into the contract of sale with Mega Prime.

It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner. On the other hand, attorney's fees may be awarded only when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as when the defendant acted in gross and evident bad faith in refusing the plaintiff's plainly valid, just and demandable claim. Such circumstances were not proved in this case.[12]

Along the same vein, in dismissing PNB's counterclaims, the CA explained:

In the same vein, We find no reason to hold Mega Prime liable on the counterclaim of PNB for moral and exemplary damages and attorney's fees. PNB's counterclaim is anchored on the alleged bad faith and ill motive of Mega Prime in filing the complaint which allegedly was done by Mega Prime to preempt PNB's foreclosure of the pledge of its shares of stock in PNB-Madecor. According to PNB, Mega Prime filed its complaint against PNB after Mega Prime received PNB's letter dated December 11, 1997 reminding it of the maturity date on November 26, 1997 of its ₱404,496,000.00 loan with PNB, evidently to prevent PNB from foreclosing the pledge.

We are not persuaded.

The records show that Mega Prime filed its complaint on November 28, 1997, and it was preceded by Mega Prime's demand letter dated November 3, 1997 addressed to PNB, informing PNB of Mega Prime's discovery that the property covered by TCT No. 160470 is

[12] *Rollo* (G.R. No. 173454), pp. 47-48.

actually owned by the Quezon City Government. In said letter, Mega Prime made a demand upon PNB to pay to Mega Prime the amounts of ₱101,124,000.00 as actual damages and ₱48,876,000.00 as other expenses, otherwise legal action shall be instituted against PNB.

Clearly, Mega Prime's complaint was filed prior to PNB's letter dated December 11, 1997. Thus, PNB's allegation that Mega Prime filed its complaint as a mere ploy to prevent foreclosure of the pledge and thus evade payment of its overdue obligation is not quite true. Accordingly, in the absence of ample proof that Mega Prime acted in gross and evident bad faith in instituting the complaint against PNB, there is no justification to grant the counterclaim of PNB.[13]

WHEREFORE, premises considered, the appealed decision is *AFFIRMED with MODIFICATION* in that the consideration in the Deed of Sale dated September 27, 1996 shall be proportionately reduced by ₱19,443,050.00, the value corresponding to the property covered by TCT No. 160740.

SO ORDERED.

Austria-Martinez (Acting Chairperson),[*] *Quisumbing,*[**] *Chico-Nazario,* and *Nachura, JJ.,* concur.

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[13] *Id.* at 48-49.

[*] Vice Associate Justice Consuelo Ynares-Santiago, Chairperson, who inhibited herself from these cases as she is related to the former counsel of one of the parties.

[**] Designated as additional member.

FIRST DIVISION

[G.R. No. 176637. October 6, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO DELA TORRE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; WHEN PRESENT; CASE AT BAR. — Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose. In the present case, the acts of Dela Torre, Bisaya, and Amoroso clearly indicate a unity of action: (1) Dela Torre called AAA and brought her inside the jeep; (2) Bisaya and Amoroso were waiting inside the jeep; (3) Dela Torre kissed and touched AAA while Bisaya and Amoroso watched; (4) Dela Torre passed AAA to Bisaya; (5) Bisaya kissed and touched AAA while Dela Torre and Amoroso watched; (6) Bisaya passed AAA to Amoroso; and (7) Amoroso inserted his penis in AAA's vagina and kissed her while Dela Torre and Bisaya watched. Since there was conspiracy among Dela Torre, Bisaya, and Amoroso, the act of any one was the act of all and each of them is equally guilty of all the crimes committed.

2. ID.; RAPE; CONVICTION THEREFOR MAY BE BASED SOLELY ON COMPLAINANT'S CREDIBLE TESTIMONY. — In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the sole basis for the accused's conviction. In the present case, AAA's testimony was clear, positive, convincing, and consistent. x x x The evaluation of the credibility of witnesses is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. It has the strategic position to determine whether witnesses are telling the truth. Thus, the Court accords great respect to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the 4 December 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00453. The Court of Appeals affirmed the 3 August 2001 Decision[2] of the Regional Trial Court (RTC), National Capital Judicial Region, Parañaque City, Branch 259, in Criminal Case Nos. 98-1094 and 99-618 finding Reynaldo Dela Torre *y* Murillo (Dela Torre) guilty beyond reasonable doubt of rape.

The Facts

At around 9:00 p.m., on 13 November 1998, AAA,[3] who was then 11 years old, went out of the house to buy barbecue. On her way back to the house, Dela Torre called her and pulled her towards a parked jeep where Richie Bisaya (Bisaya) and Leo Amoroso (Amoroso) were waiting.

Dela Torre brought AAA inside the jeep and asked her if she loved him. AAA answered that she did not love him because he was ugly. Dela Torre kissed AAA on the cheeks and lips and touched her breast and vagina. After kissing and touching AAA, Dela Torre passed AAA to Bisaya who took his turn in kissing and touching AAA. Bisaya then passed AAA to Amoroso who poked a knife on AAA's neck, removed her clothes, inserted

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[1] *Rollo*, pp. 3-11. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Renato C. Dacudao and Rosmari D. Carandang concurring.

[2] CA *rollo*, pp. 19-26. Penned by Judge Zosimo V. Escano.

[3] The real name of the victim is withheld per Republic Act Nos. 7610 and 9262.

his penis in her vagina, and kissed her. AAA felt pain and her vagina bled.

Meanwhile, AAA's uncle went out of the house to look for AAA. While looking, he urinated near the parked jeep. He saw Dela Torre looking out from the jeep and a man on top of AAA whom, because of lack of illumination, he did not recognize. The men ran away when they saw AAA's uncle. AAA's uncle tried to run after the man who was on top of AAA but was not able to catch him. He dressed AAA, who was crying inside the jeep, then brought her to the house.

When AAA's mother arrived at the house, AAA's uncle told her what happened. They immediately went to Eva Abejero (Abejero), President of the Manggahan Homeowners Association, to report the incident. Thereafter, *barangay tanods* looked for Dela Torre, Bisaya, and Amoroso but were only able to find Dela Torre inside a hut. The *barangay tanods* brought Dela Torre to Abejero's house, then brought him to the police station where AAA positively identified him as one of the offenders.

Dr. Emmanuel N. Reyes of the National Headquarters Philippine National Police Crime Laboratory examined AAA. In his report dated 14 November 1998, he found a deep healing laceration at 9 o'clock position and shallow healing lacerations at 3, 4, 5, 6, and 7 o'clock positions of the genital. He concluded that his findings were compatible with recent loss of physical virginity.

In an information dated 29 December 1998, Assistant Prosecutor Antonietta Pablo-Medina (Pablo-Medina) charged Dela Torre, Bisaya, and Amoroso with rape:

> That on or about the 13th day of November, 1998, in the City of Parañaque, Philippines and within the jurisdiction of [the RTC, Dela Torre], conspiring and confederating together [with Amoroso and Bisaya], all of them mutually helping and aiding one another, armed with a deadly weapon, by means of force and intimidation did then and there willfully, unlawfully and feloniously [have] carnal knowledge with [AAA], a child 11 years of age, against her will.[4]

[4] Records, p. 13.

In another information dated 29 December 1998, Pablo-Medina charged Dela Torre, Bisaya, and Amoroso with acts of lasciviousness:

> That on or about the 13th day of November, 1998, in the City of Parañaque, Philippines and within the jurisdiction of [the RTC, Dela Torre], conspiring and confederating together with [Bisaya and Amoroso], all of them mutually helping and aiding one another, with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon [AAA], by then and there kissing her on the different parts of her face, mashing her breast and touching her private parts, against her will.[5]

Since Bisaya was allegedly already dead and Amoroso was still at large, trial proceeded against Dela Torre only. Dela Torre pleaded not guilty to both charges. He claimed that he was in a hut which was ten arms-length (*dipa*) away from the jeep when the incident happened. A certain Jojo Sestosa (Sestosa) testified that, indeed, Dela Torre was inside the hut with him on 13 November 1998. However, Sestosa slept and he did not know if Dela Torre left the hut while he was asleep.

The RTC's Ruling

In its 3 August 2001 Decision, the RTC dismissed the charge for acts of lasciviousness and found Dela Torre guilty beyond reasonable doubt of rape:

> WHEREFORE, PREMISES CONSIDERED, Crim. Case No. 98-618 for Acts of Lasciviousness as against Reynaldo dela Torre is ordered **DISMISSED** and finding **Reynaldo dela Torre GUILTY** beyond reasonable doubt for the crime of rape in Crim. Case No. 98-1094 as defined and penalized under Art. 266-A par. 1(a) and (d) of the Revised Penal Code in relation to Art. 266-B 1st par. of RPC as amended by in [sic] RA 8353 and considering the aggravating circumstance of use of a deadly weapon and the crime having been committed by more than one person without any mitigating circumstances, accused **REYNALDO DELA TORRE** is hereby sentenced to the supreme penalty of death by lethal injection and suffer the accessory penalties provided by law specifically Art. 40

[5] *Id.* at 14.

of the Revised Penal Code and to indemnify [AAA], the private complainant, the amount of Php 75,000.00 in line with existing jurisprudence, Php 75,000.00 for moral damages and Php 75,000.00 as exemplary damages.[6]

The RTC held that (1) AAA's testimony was credible; (2) AAA was unequivocal and explicit in identifying Dela Torre as one of the offenders; (3) there was conspiracy among Dela Torre, Bisaya, and Amoroso; (4) Dela Torre's flat and unsubstantiated denial did not deserve any significant consideration; and (5) the alleged acts of lasciviousness were merely acts preparatory to or part of the rape.

On appeal, Dela Torre contended that the RTC erred in finding him guilty beyond reasonable doubt. He claimed that the declaration of AAA's uncle in his sworn affidavit dated 16 November 1998 that he did not know the offenders and his act of identifying Dela Torre as one of the offenders during the trial were inconsistent. Furthermore, Dela Torre contended that identification was difficult because the place where the incident happened was dark.

The Court of Appeals' Ruling

In its 4 December 2006 Decision, the Court of Appeals affirmed the RTC's Decision with modification of the penalty. In keeping with Republic Act No. 9346, the Court of Appeals reduced the penalty from death to *reclusion perpetua* with all its accessory penalties.

The Court of Appeals held that (1) the medical findings were consistent with AAA's testimony that she was raped; (2) there was no showing that AAA's uncle could not have possibly identified Dela Torre at the place where the incident happened; (3) AAA positively identified Dela Torre as one of the offenders; (4) there was no ill-motive on AAA's part; (5) AAA's testimony was straightforward and candid; (6) testimonies of young rape victims are accorded great weight; (7) the defense of denial is weak and cannot prevail over positive identification; and (8) there was conspiracy among Dela Torre, Bisaya, and Amoroso.

[6] CA *rollo*, pp. 25-26.

Hence, this appeal.

The Court's Ruling

The Court finds Dela Torre guilty of rape.

An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.[7]

The lower courts found that there was conspiracy among Dela Torre, Bisaya, and Amoroso. The RTC held that:

> [**I**]**t is quite apparent that** [**Dela Torre, Bisaya, and Amoroso**] **conspired and mutually helped one another in raping the young victim**. Reynaldo dela Torre and Ritchie Bisaya did not do anything to stop Amoroso in ravishing the victim and they even acted as lookouts and it could be safely surmised that they were just waiting for their turns after Amoroso shall have finished raping the victim were it not for the sudden appearance of the victim's uncle x x x that prompted the three misfits to scamper and disappear in the cover of darkness.[8] (Emphasis supplied)

The Court of Appeals held that, "Considering that the unrebutted testimony of the victim showed the combined actuations of all the accused, including [Dela Torre], clearly indicating a common design to commit the crime of rape, conspiracy was satisfactorily proved."[9]

The Court agrees. Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose.[10] In the present case, the acts of Dela Torre, Bisaya, and Amoroso clearly indicate a unity of action: (1) Dela Torre called AAA and brought her inside the jeep; (2) Bisaya and Amoroso were waiting inside the jeep; (3) Dela Torre kissed and touched AAA while Bisaya and Amoroso watched; (4) Dela Torre passed AAA to Bisaya; (5) Bisaya

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[7] *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412.

[8] CA *rollo*, p. 24.

[9] *Rollo*, p. 10.

[10] *People v. Sumalinog, Jr.*, 466 Phil. 637, 658 (2004).

kissed and touched AAA while Dela Torre and Amoroso watched; (6) Bisaya passed AAA to Amoroso; and (7) Amoroso inserted his penis in AAA's vagina and kissed her while Dela Torre and Bisaya watched.

Since there was conspiracy among Dela Torre, Bisaya, and Amoroso, the act of any one was the act of all and each of them is equally guilty of all the crimes committed.[11]

The lower courts found Dela Torre guilty beyond reasonable doubt of rape. The RTC held that:

> While [it] is true that it was only Leo Amoroso who actually ravished the victim based on the testimony of the private complainant that Amoroso succeeded in inserting his penis to her private parts and that Reynaldo dela Torre and Ritchie Bisaya merely kissed her and fondled her private parts, accused dela Torre can likewise be held liable for the bestial acts of Amoroso as it is quite apparent that the three of them conspired and mutually helped one another in raping the young victim.[12]

The Court of Appeals held that:

> [W]hile [Dela Torre] did not have carnal knowledge with [AAA], his tacit and spontaneous participation and cooperation of pulling her towards the parked jeep, molesting her and doing nothing to prevent the commission of the rape, made him a co-conspirator. As such, he was properly adjudged as a principal in the commission of the crime.[13]

The Court agrees. During the trial, AAA testified that Amoroso raped her:

> A: *Pinasa ako ni* Ritchie [B]isaya *kay* Leo Amoroso *at noong na kay* Leo Amoroso *na ako ay hinubad ang* short[s] *ko at* [T]-shirt *ko*.
>
> Q: *Sino ang naghubad*?
> A: *Si* Leo Amoroso *po*.

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[11] *People v. Caraang*, 463 Phil. 715, 759 (2003).

[12] CA *rollo*, p. 24.

[13] *Rollo*, p. 10.

Q: *Noong hinubaran ka, ano ang ginawa* [*nina* Dela Torre *at* Bisaya]?
A: *Nasa likod po sila ng* jeep.

Q: *Ano ang ginagawa nila*?
A: *Nakatingin po sa amin.*

Q: *At noong hinubad na ni* Leo Amoroso [*iyong*] shorts *at* [T]-shirt *mo, ano ang ginawa niya sa iyo*?
A: *Pinasok niya po ang ari niya sa ari ko.*

Q: *Noong hinuhubaran ka na, anong posisyon niyo noon*?
A: *Naka-higa po.*

Q: *Noong nakahubad ka na at nakahiga ano naman ang ginagawa ng dalawa*?
A: *Nakatingin po sa amin.*

Q: *Noong hinuhubaran ka, nanlaban ka ba*?
A: *Hindi na po.*

Q: *Bakit*?
A: *May kutsilyo po kasi siya.*

Q: *Sino ang may kutsilyo*?
A: *Si* Leo Amoroso *po.*

Q: *Ano ang ginawa niya sa kutsilyo*?
A: [*Tinutok*] *po* [*sa akin*].

Q: *Saan*?
A: *Sa leeg po.*

Q: *Nagawa ba ni* Leo Amoroso *ang ipasok ang ari niya sa ari mo*? *Hinubad ba niya ang* shorts *mo at* shorts *niya*?
A: *Opo.*

Q: *Pagkatapos*?
A: *Doon niya ako inano.*

Q: *Anong inano*?
A: *Pinasok niya po.*

Q: *Dinapaan ka ba*?
A: *Opo.*

Q: *At naipasok*?
A: *Opo.*

Q: *Nasaktan ka ba*?
A: *Opo*.

Q: *Pagkatapos ipasok niya ang ari niya sa ari mo, ano naman ang ginagawa ng dalawa*?
A: *Nakaupo po sila*.

Q: *Ano pa*?
A: *Nakatingin po sa amin*.

Q: *Anong nangyari pagkatapos*?
A: [*Hinalikan*] *po ako ni* Leo Amoroso.

x x x x x x x x x

Q: *Noong* November 13 *ay na*-rape *ka*?
A: *Opo*.

Q: *Naipasok ba ng akusado yung ari niya*?
A: *Opo*.

Q: *Noong pinasok niya ay may dugo ba*?
A: *Opo*.

Q: *May sugat*?
A: *Opo*.

Q: *Alin ang naduguan*? [*Iyong*] panty *mo ba ay may dugo*?
A: *Opo*.

Q: *Dugo*?
A: *Opo*.[14]

In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the sole basis for the accused's conviction.[15] In the present case, AAA's testimony was clear, positive, convincing, and consistent. The lower courts found AAA's testimony credible. The RTC held that:

[I]f a woman says she has been raped, she says in effect all that is necessary to show that she has indeed been raped. This is especially true in the case at bar where the **private complainant was only 11**

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[14] TSN, 23 September 1999, pp. 15-23.

[15] *People v. Montinola*, *supra* note 7.

years of age at the time of the incident and her testimony like the testimonies of other rape victims who are young and of tender age, is credible. She did not hesitate one bit in positively identifying Reynaldo dela Torre as one of the assailants who took advantage of her youthful and frail body in satisfying their lust for the flesh.[16] (Emphasis supplied)

The Court of Appeals held that, "A rape victim's testimony, when straightforward and candid, x x x unflawed by inconsistencies or contradictions in its material points, must be given full faith and credit, more so in the case of a child-victim, as in this case, whose youth and immaturity are considered badges of truth."[17]

The evaluation of the credibility of witnesses is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. It has the strategic position to determine whether witnesses are telling the truth. Thus, the Court accords great respect to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case.[18] In *People v. Dy*,[19] the Court held that:

[W]ell-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.

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[16] CA *rollo*, p. 24.

[17] *Rollo*, pp. 9-10.

[18] *People v. Montinola*, *supra* note 7.

[19] 425 Phil. 608, 645-646 (2002).

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they are lying.

Dela Torre contended that the RTC overlooked some substantial facts: (1) AAA's uncle's declaration in his sworn affidavit that he did not know the offenders and his act of identifying Dela Torre as one of the offenders during the trial were inconsistent; and (2) identification was difficult because the place where the incident happened was dark.

The Court is not impressed. Dela Torre's contentions are trifling matters which do not affect the outcome of the case. Even if his contentions were deemed substantial, the outcome of the case would still not be affected. First, AAA's uncle may not have personally known the offenders but, after witnessing the incident, he was able to identify Dela Torre during the trial as one of the offenders. The Court notes that AAA's uncle positively identified Dela Torre as one of the offenders even at the time he executed the sworn affidavit. The sworn affidavit provides:

T: *Kilala mo ba* [*iyong*] *mga umabuso sa pamangkin mo*?
S: ***Hindi po***.

T: *May ipapakita akong tao* [*sa iyo*], *ano ang masasabi mo sa kanya*?
S: *Siya po* (**Affiant pointed to the person of REYNALDO DELA TORRE *y* MURILLO inside the DID Room as one of the trio inside the jeep** watching the sexual intercourse between the victim and suspect LEO AMOROSO).[20] (Emphasis supplied)

Second, there was no showing that visibility was impossible at the place where the incident happened. In fact, Dela Torre himself admitted that the place was not too dark and that visibility was possible — he testified that he was able to see AAA, AAA's uncle, and Amoroso at the place:

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[20] Records, p. 4.

A: ***Nakita ko lang po si*** [**AAA**] ***na hawak po siya ni*** **Leo Amoroso**.

Q: *Kailan mo nakita*?
A: *Noong* November 13, 1998 *po*, [9 p.m.]

Q: *Saang lugar mo sila nakita*?
A: *Doon po sa may* jeep, *sa may paradahan po*.

x x x x x x x x x

Q: *At noong makita mo sina* Leo Amoroso *at* [AAA], *ano ang ginagawa nila, kung meron man*?
A: ***Si*** **Leo** ***po, nasa loob ng*** **jeep**. ***At si*** [**AAA**] ***naman po, nasa baba siya ng*** **jeep, *hawak-hawak siya ng tiyuhin niya***.[21] (Emphasis supplied)

The Court modifies Dela Torre's civil liability. He is still ordered to pay AAA ₱75,000 as civil indemnity and ₱75,000 as moral damages. Instead of ₱75,000, however, he is ordered to pay AAA only ₱25,000 as exemplary damages.[22]

WHEREFORE, the Court *AFFIRMS* the 4 December 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00453 with the *MODIFICATION* that the exemplary damages shall be ₱25,000.

SO ORDERED.

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

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[21] TSN, 28 February 2001, pp. 15-16.

[22] *People v. Montinola*, *supra* note 7.

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

EN BANC

[G.R. No. 176724. October 6, 2008]

MAYOR KENNEDY B. BASMALA, *petitioner, vs.* **COMMISSION ON ELECTIONS and AMENODIN U. SUMAGAYAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; THE EXPIRATION OF TERM OF THE CONTESTED OFFICE RENDERS THE RESOLUTION OF THE CASE MOOT AND ACADEMIC. — The issue of who was the duly elected mayor of Taraka, Lanao del Sur during the May 10, 2004 National and Local Elections has been rendered moot and academic by the expiration of the term of the contested office, and the election and proclamation of a new set of municipal officials after the May 14, 2007 National and Local Elections. It is an exercise in futility indeed for the Court to still indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the elections, because whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AS A GROUND FOR FILING THEREOF; CONSTRUED. — Grave abuse of discretion is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. ID.; APPEALS; FINDINGS OF THE COMMISSION ON ELECTIONS, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE ARE FINAL, NON REVIEWABLE AND BINDING UPON THE SUPREME COURT; RATIONALE. — The COMELEC, in resolving the case, examined the records

of the protest, the evidence submitted by the parties, and the pertinent election documents. As it is the specialized agency tasked with the supervision of elections all over the country, its findings of fact when supported by substantial evidence are final, non-reviewable and binding upon the Court. Furthermore, the appreciation of election documents involves a question of fact best left to the determination of the COMELEC. Let it be reiterated that the Court is not a trier of facts and it will only step in if there is a showing that the COMELEC committed grave abuse of discretion.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Pete Quirino-Quadra for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

For the resolution of the Court is a petition for *certiorari* under Rule 64 of the Rules of Court assailing the October 13, 2006 Resolution[1] of the Commission on Elections (COMELEC) Second Division and the March 1, 2007 Resolution[2] of the COMELEC *en banc* in EAC No. A-11-2006.

The petitioner Kennedy B. Basmala (Basmala) and the private respondent Amenodin U. Sumagayan (Sumagayan) were candidates for mayor in Taraka, Lanao del Sur during the May 10, 2004 National and Local Elections. After the counting and canvassing of votes, Sumagayan emerged as the winner with 2,103 votes as opposed to Basmala's 1,866 votes.[3] Contesting the results in 21 out of the 43 precincts that functioned in Taraka, Basmala filed an election protest docketed as Election Case

[1] *Rollo*, pp. 44-66.

[2] *Id.* at 38-43.

[3] *Id.* at 45.

No. 1415-04 with the Regional Trial Court (RTC) of Marawi City, Lanao del Sur, Branch 9.[4]

On March 20, 2006, the trial court rendered its Decision[5] declaring petitioner as the duly elected municipal mayor of Taraka. The RTC arrived at this ruling by tallying the results in 38 precincts[6] after rejecting the results in the election returns of precincts 2-A, 19-A, 28-A, 30-A and 39-A.[7] Accordingly, the results were 1,831 votes for Basmala and 1,662 for Sumagayan.[8]

Aggrieved, private respondent interposed an appeal with the COMELEC. On October 13, 2006, the Commission's Second Division rendered the aforesaid assailed Resolution[9] reversing and setting aside the trial court's decision. It ruled that the RTC was in error when it merely relied on the testimonies of Basmala's witnesses, who were his relatives and watchers, and discounted the testimonies of the Board of Election Inspectors (BEI) chairpersons that the conduct of elections in the contested precincts was generally orderly and peaceful. The COMELEC declared that the evidence adduced was not sufficient to justify the invalidation of the election results in the 5 contested precincts. Further, the watchers of the candidates for the other positions in both the national and local levels did not complain of any irregularity or fraud in the counting and canvassing of votes. In the absence of clear and convincing evidence that massive fraud attended the elections in the said 5 precincts, the election returns therein should be upheld. Thus, after a tabulation of the results in the COMELEC copy of the returns from the 43 precincts, the results were 2,103 votes for Sumagayan and 1,866 for Basmala.[10]

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[4] *Id.*

[5] *Id.* at 85-150.

[6] *Id.* at 147-149.

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

[8] *Id.* at 149.

[9] *Supra* note 1.

[10] *Rollo,* pp. 54-65.

Petitioner then moved for reconsideration. The COMELEC *en banc*, however, in its assailed March 1, 2007 Resolution,[11] sustained the division ruling. It ruled that petitioner, by presenting only the self-serving testimonies of his witnesses, failed to discharge his burden of proving the truthfulness of his allegations. The authenticity and genuineness of the election returns could not be disregarded because the returns were not proven to be false, tainted or manufactured.[12]

Discontented, petitioner instituted the instant petition for *certiorari* before the Court.

We dismiss the petition.

The issue of who was the duly elected mayor of Taraka, Lanao del Sur during the May 10, 2004 National and Local Elections has been rendered moot and academic by the expiration of the term of the contested office, and the election and proclamation of a new set of municipal officials after the May 14, 2007 National and Local Elections.[13] It is an exercise in futility indeed for the Court to still indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the elections, because whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced.[14]

This notwithstanding, the Court finds that no grave abuse of discretion tainted the assailed COMELEC resolutions as to warrant the issuance of the extraordinary writ of *certiorari*. Grave abuse of discretion is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is

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[11] *Supra* note 2.

[12] *Rollo*, pp. 40-41.

[13] *Albaña v. Commission on Elections*, 478 Phil. 941, 949 (2004); *Trinidad v. Commission on Elections*, 373 Phil. 802, 812-813 (1999), citing *Malaluan v. Commission on Elections*, 324 Phil. 676, 683 (1996).

[14] *Indira R. Fernandez v. Commission on Elections and Mark Anthony B. Rodriguez*, G.R. No. 176296, June 30, 2008.

not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15]

The COMELEC, in resolving the case, examined the records of the protest, the evidence submitted by the parties, and the pertinent election documents. As it is the specialized agency tasked with the supervision of elections all over the country, its findings of fact when supported by substantial evidence are final, non-reviewable and binding upon the Court.[16] Furthermore, the appreciation of election documents involves a question of fact best left to the determination of the COMELEC.[17] Let it be reiterated that the Court is not a trier of facts[18] and it will only step in if there is a showing that the COMELEC committed grave abuse of discretion.

ACCORDINGLY, the petition for *certiorari* is *DISMISSED*.

SO ORDERED.

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

Corona, J., on leave.

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[15] *Cantoria v. Commission on Elections*, G.R. No. 162035, November 26, 2004, 444 SCRA 538, 543.

[16] *Idulza v. Commission on Elections*, G.R. No. 160130, April 14, 2004, 427 SCRA 701, 707-708.

[17] *Punzalan v. Commission on Elections*, 352 Phil. 538, 552 (1998).

[18] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128.

EN BANC

[G.R. No. 177736. October 6, 2008]

MELANIE P. MONTUERTO, *petitioner, vs.* **HONORABLE MAYOR ROLANDO E. TY and THE SANGGUNIANG BAYAN, represented by HONORABLE VICE-MAYOR RICHARD D. JAGUROS, all of the Municipality of Almeria, Biliran,** *respondents.*

SYLLABUS

POLITICAL LAW; LAW ON PUBLIC OFFICERS; THE HEAD OF A DEPARTMENT OR OFFICE IN THE MUNICIPAL GOVERNMENT SHALL BE APPOINTED BY THE MAYOR WITH THE CONCURRENCE OF THE MAJORITY OF ALL THE SANGGUNIANG BAYAN MEMBERS SUBJECT TO THE CIVIL SERVICE LAW, RULES AND REGULATIONS; APPLICATION IN CASE AT BAR. — The law is clear. Under Section 443(a) and (d) of Republic Act (R.A.) No. 7160 or the Local Government Code, the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all *Sangguniang Bayan* members subject to civil service law, rules and regulations. Per records, the appointment of petitioner was never submitted to the *Sangguniang Bayan* for its concurrence or, even if so submitted, no such concurrence was obtained. Such factual finding of quasi-judicial agencies, especially if adopted and affirmed by the CA, is deemed final and conclusive and may not be reviewed on appeal by this Court. This Court is not a trier of facts and generally, does not weigh anew evidence already passed upon by the CA. Absent a showing that this case falls under any of the exceptions to this general rule, this Court will refrain from disturbing the findings of fact of the tribunals below. Moreover, we agree with the ruling of the CA that the verbal concurrence allegedly given by the *Sanggunian*, as postulated by the petitioner, is not the concurrence required and envisioned under R.A. No. 7160. The *Sanggunian*, as a body, acts through a resolution or an ordinance. Absent such resolution of concurrence, the appointment of petitioner failed

to comply with the mandatory requirement of Section 443(a) and (d) of R.A. No. 7160. Without a valid appointment, petitioner acquired no legal title to the Office of Municipal Budget Officer, even if she had served as such for ten years.

APPEARANCES OF COUNSEL

Villordon Law Office for petitioner.
Clemencio C. Sabitsana, Jr. for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated October 31, 2006 and Resolution[3] dated March 29, 2007, which affirmed *in toto* the Resolution of the Civil Service Commission (CSC) dated June 7, 2005.

The antecedents, as found by the CA, are as follows:

On March 17, 1992, petitioner was issued an appointment as Municipal Budget Officer by the then Mayor Supremo T. Sabitsana of the Municipality of Almeria, Biliran. On March 24, 1992, her appointment was approved as permanent by Gerardo Corder, Acting Civil Service Commission Field Officer.

On January 14, 2002, the *Sangguniang Bayan* of Almeria, Biliran passed Sangguniang Bayan (SB) Resolution No. 01-S-2002 entitled "*A Resolution Requesting the Civil Service Commission Regional Office, to Revoke the Appointment of Mrs. Melanie P. Montuerto, Municipal Budget Officer of the Municipality of Almeria, Biliran for Failure to Secure the Required Concurrence from the Sangguniang Bayan*."

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[1] *Rollo*, pp. 14-23.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Arsenio J. Magpale and Priscilla Baltazar-Padilla concurring; *id*. at 25-37.

[3] *Rollo*, pp. 39-43.

Consequently, the Municipality of Almeria, Biliran submitted the 201 file of petitioner to Civil Service Commission Regional Office No. VIII (CSCRO No. VIII) which showed that petitioner's appointment lacked the required concurrence of the local *sanggunian*. On the other hand, petitioner submitted to the same office a Joint-Affidavit[4] executed on March 6, 2002, by the majority of the then members of the *Sangguniang Bayan* of Almeria, Biliran, the pertinent portion of which reads:

> 4. Since the regular session focused on the deliberations regarding the municipal budget, the concurrence on the appointment of Municipal Budget Officer Melanie P. Montuerto was not highlighted and the concurrence was inadvertently omitted in the Minutes of the Regular Session for 2 March 1992. But, we can still fully recall that there was really a verbal concurrence on the appointment of Municipal Budget Officer Melanie P. Montuerto x x x.

On March 11, 2002, CSCRO No. VIII issued an Order decreeing:

> WHEREFORE, foregoing premises considered, the approval on the appointment of Melanie P. Montuerto as Municipal Budget Officer of LGU-Almeria, Leyte xxx is hereby RECALLED on the ground that it lacks the required concurrence of the majority of all the members of the Sangguniang Bayan of LGU-Almeria, Biliran.

Petitioner moved for reconsideration. Before resolving the motion, CSCRO No. VIII invited Marcelo C. Maceda, Jr., incumbent SB Secretary, to appear and bring with him any document showing that petitioner's appointment as Municipal Budget Officer had been submitted to the SB for concurrence. In reply, Maceda issued a Certification on June 10, 2002, which reads:

> This is to certify that as per records kept on file by this office, there is no record that would show that the appointment of Mrs. Melanie P. Montuerto, as Municipal Budget Officer of Almeria, Biliran was submitted to the Sangguniang Bayan for concurrence from June 1992 up to the present.

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[4] *Id*. at 90-91.

However, the SB minutes of the March 2, 1992 regular session pointed out the presence of a budget officer who explained fully the details of the 1992 Municipal Annual Budget of Almeria, Biliran.

Likewise, Maceda submitted a copy of the SB Minutes of the regular session held on March 2, 1992.

On July 9, 2002, CSCRO No. VIII denied petitioner's motion for reconsideration. Aggrieved, petitioner appealed to the CSC Central Office. After due consideration of the pleadings and documents presented, the latter issued CSC Resolution No. 040728 dated July 1, 2004, disposing of petitioner's appeal in this wise:

WHEREFORE, the instant appeal of Melanie P. Montuerto is hereby **DISMISSED**. Accordingly, the appealed Order dated March 11, 2002 of the Civil Service Commission-Regional Office No. VIII, Palo, Leyte, recalling the initial approval of the appointment of Montuerto as Municipal Budget Officer of Almeria, Biliran, for lack of the required concurrence by the majority of all the members of *Sangguniang Bayan*, is hereby **AFFIRMED**.

Petitioner filed a motion for reconsideration which was denied in CSC Resolution No. 050756 dated June 7, 2005. Meanwhile, on July 30, 2004, the Municipal Mayor of Almeria, Biliran issued Office Order No. 15 which directed the indefinite detail of the petitioner to the Cooperative Development Project. In the same office order, the commutable representation and transportation allowance of petitioner was removed. On July 11, 2005, the Municipal Mayor issued a Memorandum terminating the services of petitioner as Municipal Budget Officer pursuant to CSC Resolution No. 050756.

Petitioner filed a Petition for Review under Rule 43 of the Rules of Civil Procedure before the CA, which denied it for lack of merit.

Hence, the instant Petition raising the sole issue of whether the appointment of petitioner as Municipal Budget Officer, without the written concurrence of the *Sanggunian*, but duly approved by the CSC and after the appointee had served as such for almost ten years without interruption, can still be revoked by the Commission.

We resolve to deny the Petition.

The law is clear. Under Section 443(a) and (d) of Republic Act (R.A.) No. 7160[5] or the Local Government Code, the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all *Sangguniang Bayan* members[6] subject to civil service law, rules and regulations. Per records, the appointment of petitioner was never submitted to the *Sangguniang Bayan* for its concurrence or, even if so submitted, no such concurrence was obtained. Such factual finding of quasi-judicial agencies, especially if adopted and affirmed by the CA, is deemed final and conclusive and may not be reviewed on appeal by this Court. This Court is not a trier of facts and generally, does not weigh anew evidence already passed upon by the CA. Absent a showing that this case falls under any of the exceptions to this general rule, this Court will refrain from disturbing the findings of fact of the tribunals below.

Moreover, we agree with the ruling of the CA that the verbal concurrence allegedly given by the *Sanggunian*, as postulated by the petitioner, is not the concurrence required and envisioned under R.A. No. 7160. The *Sanggunian*, as a body, acts through a resolution or an ordinance. Absent such resolution of concurrence,

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[5] SEC. 443. *Officials of the Municipal Government.* — (a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, sangguniang bayan members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, **a municipal budget officer**, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.

x x x x x x x x x

(d) Unless otherwise provided herein, heads of departments and offices shall be appointed by the municipal mayor **with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations.** The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed (Emphasis supplied).

[6] *Municipality of La Libertad, Negros Oriental v. Penaflor*, G.R. No. 155477, March 18, 2005, 453 SCRA 833, 841.

the appointment of petitioner failed to comply with the mandatory requirement of Section 443(a) and (d) of R.A. No. 7160. Without a valid appointment, petitioner acquired no legal title to the Office of Municipal Budget Officer, even if she had served as such for ten years.

Accordingly, the CSC has the authority to recall the appointment of the petitioner.[7]

All told, we find no reversible error on the part of the CA.

WHEREFORE, the instant Petition is *DENIED* for lack of merit. No costs.

SO ORDERED.

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

Corona, J., on leave.

THIRD DIVISION

[G.R. No. 178443. October 6, 2008]

SPOUSES LORENZO H. LABAYEN and ANA G. LABAYEN, *petitioners, vs.* **LEONARDO R. SERAFICA,** *respondent*.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; FAILURE TO PAY DEPOSIT AND RENTALS RESULT IN AUTOMATIC

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[7] *Sales v. Carreon, Jr.,* G.R. No. 160791, February 13, 2007, 515 SCRA 597, 607.

RESCISSION OF LEASE CONTRACT; INSCRIPTION OF LEASE CONTRACT TO TITLE MAY BE CANCELLED. — Petitioners admitted that they did not pay the stipulated deposit equivalent to two (2) months' rental. Neither did they pay the agreed monthly rentals provided in the lease contract. They, however, justified their non-compliance, claiming that Milagros and respondent refused to deliver possession of the property. Petitioners' justification fails to persuade. Records show that the possession of the subject property was delivered to petitioners on July 20, 1995. The delivery was confirmed by Ana Labayen when she testified in open court. Despite delivery, petitioners did not pay the stipulated rental deposit and monthly rentals. Clearly thus, the automatic cancellation took effect, resulting in the termination of the contract of lease. It is clear that at the time of the filing of the petition for cancellation of encumbrance before the court *a quo,* the lease contract already lost its efficacy. Accordingly, there is no basis to save its annotation on respondent's title. The RTC, therefore, correctly dismissed petitioners' action for cancellation of encumbrance, and the CA committed no reversible error in sustaining the RTC.

2. ID.; DAMAGES; MORAL DAMAGES; NOT PROPER IN THE ABSENCE OF INJURY RESULTING FROM BREACH OF DUTY. — It is settled that, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff — a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law; thus, there must first be a breach before damages may be awarded, and the breach of such duty should be the proximate cause of the injury. It is not enough that one suffered sleepless nights, mental anguish or serious anxiety as a result of the actuations of the other party. It is also required that a culpable act or omission was factually established, that there is proof that the wrongful act or omission of the defendant is the proximate cause of the damage sustained by the claimant, and that the case is predicated on any of the instances expressed or envisioned by Articles 2219 and 2220 of the Civil Code.

APPEARANCES OF COUNSEL

Manuel B. Imbong for petitioners.

D E C I S I O N

NACHURA, *J.*:

This petition for review filed by spouses Lorenzo H. Labayen and Ana G. Labayen seeks to nullify and set aside the April 19, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73866, which affirmed the Decision[2] dated October 4, 2001 of the Regional Trial Court (RTC) of Quezon City and the June 18, 2007 Resolution[3] denying petitioners' motion for reconsideration.

The antecedents:

Milagros S. Serafica (Milagros) was the owner of a 221-square-meter lot in Epifanio Delos Santos Avenue (EDSA), Cubao, Quezon City then covered by Transfer Certificate of Title (TCT) No. 45147.

On October 12, 1991 Milagros leased out the property to petitioner Ana G. Labayen. The lease was for fifteen (15) years beginning August 16, 1992 up to August 15, 2007, renewable upon mutual agreement of the parties. The stipulated monthly rental was ₱15,000.00 for the first 5 years, ₱20,000.00 for the next 5 years and ₱25,000.00 for the last 5 years, payable every 10th day of each month.[4] It was also agreed that the lessee

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 42-50.

[2] *Rollo,* pp. 71-74.

[3] *Id.* at 51.

[4] 2. Rental. The LESSEE shall pay, without need of further demand, a monthly rental of FIFTEEN THOUSAND PESOS (₱15,000.00) for the first five years, TWENTY THOUSAND PESOS (₱20,000.00) for the next five years, and TWENTY-FIVE THOUSAND PESOS (₱25,000.00) for the last five years within the first ten (10) days of each and every month, in the city residence of the LESSOR. (*Id.* at 58.)

would deposit the amount equivalent to two months' rental upon the execution of the contract.[5] The contract further contained an automatic cancellation clause in case of failure to pay the rental or to comply with any of the terms and conditions of the contract.[6] The lease was annotated on TCT No. 45147 on August 17, 1992 under Entry No. 1036/T-45147.

On April 28, 1994, Milagros donated the subject lot to respondent Leonardo Serafica (respondent), resulting in the issuance of TCT No. 107254.[7] Entry No. 1036/T-45147, or the annotation of the lease contract, was carried over to respondent's transfer certificate of title.

On June 3, 1996, Ana Labayen and respondent allegedly executed a *Cancellation of Contract of Lease*.[8] The deed was duly annotated on respondent's title under Entry No. 5797/T-107254,[9] resulting in the cancellation of Entry No. 1036/T-45147.

Claiming forgery in the execution of the *Cancellation of Contract of Lease*, petitioners filed suit for cancellation of encumbrance[10] against respondent with the RTC of Quezon City, docketed as LRC Case No. Q-8673(96). Essentially, they sought the cancellation of Entry No. 5797/T-107254 and the revival of Entry No. 1036/T-45147 or the inscription of the contract of lease on respondent's title.

Traversing the petition, respondent argued that petitioners have no cause of action against him. Respondent averred that petitioners did not comply with the stipulations in the contract,

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[5] 16. Deposit: Upon the signing of this contract, the LESSEE shall make a deposit of two months rental to the LESSOR, of which said deposit shall not be applied to any rental that is due; said deposit shall be reimbursed at the end of this contract. (*Id.* at 60.)

[6] *Rollo*, pp. 58-60

[7] *Id.* at 61.

[8] *Id.* at 63-64.

[9] *Id.* at 62.

[10] *Id.* at 52-57.

specifically the payment of monthly rentals and payment of two months' deposit; thus, the lease had already been terminated pursuant to the automatic cancellation clause. He further denied petitioners' allegation of forgery in the execution of the *Cancellation of Lease Contract*, and insisted on the validity of Entry No. 5797/T-107254.[11]

After trial, the RTC rendered a Decision on October 4, 2001, dismissing the petition, *viz.*:

> Petitioners claimed that their signatures in the Cancellation of Contract of Lease were forged. To bolster their allegation, they presented Jennifer Dominguez, Document Examiner of the National Bureau of Investigation, who testified that she conducted the handwriting examination in the questioned document and ended up with the conclusion that the [signatures] of petitioners Ana Labayen and Lorenzo Labayen are not theirs after comparing the said signatures with the standard signatures.
>
> There being a finding by an expert that the signatures of the petitioners in the questioned document are not theirs, the Court has to rule that the signatures of the petitioners were indeed forged.
>
> As to whether respondent is the author of the forgery, the Court finds in the negative.
>
> Respondent Serafica had sufficiently explained in his testimony that the cancellation of the lease contract was caused by Alice Suratos. That the latter made the impression that she can work it out with petitioner Labayen for the cancellation of the contract of lease over certain consideration. Thus, he signed a document prepared by Suratos which is a cancellation of the contract of lease. That the consideration, according to Suratos, is that petitioner Labayen will be exempted from back rentals awarded by the Court in a suit filed by her against Judge Villanueva. That he never met petitioner Labayen face to face regarding the document "cancellation of lease contract" as it was Suratos who dealed (sic) with petitioner. That he did not even appear before Notary Public Jose Reyes.
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> Anent the third and last issue, which the Court believes to be material in the resolution of the instant case, the Court also rules in the negative.

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[11] *Id.* at 66-69.

The Court believes that petitioners failed to show a right that was violated by respondent. Petitioners simply have no cause of action against respondent. They suffered no damage. Petitioners failed to show that they have a right to maintain the annotation of a non-enforceable lease contract on the title of respondent. Petitioners failed to establish validity and efficacy of the lease contract they sought retention of its annotation in respondent's title. And for the Court to so render a contrary ruling would only caused (sic) undue prejudice to the respondent.

ACCORDINGLY, THEREFORE, the instant petition is hereby dismissed for lack of merit.

IT IS SO ORDERED.[12]

Petitioners appealed to the CA. On April 19, 2007, the CA rendered the assailed Decision affirming the RTC. In gist, the CA agreed with the RTC that petitioners have no cause of action against respondent. The appellate court found no reason to disturb the findings that petitioners failed to make a deposit and to pay the monthly rentals resulting in the automatic cancellation and termination of the lease contract. Thus, petitioners lost their status as lessees, and there is no basis for them to maintain the inscription of the contract of lease on respondent's title.

The CA disposed, thus:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED**. The challenged Decision **STANDS**.

SO ORDERED.[13]

Petitioners sought a reconsideration of the CA Decision, but the same was denied on June 18, 2007.[14]

Hence, this appeal by petitioners, arguing that:

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS' FAILURE TO PAY THE DEPOSIT AND

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[12] *Id.* at 73-74.

[13] *Id.* at 49-50.

[14] *Id.* at 51.

SUBSEQUENT RENTALS OCCASIONED BY THE FAILURE OF RESPONDENT TO DELIVER POSSESSION OF THE PROPERTY RESULTED IN AUTOMATIC RESCISSION OF THE LEASE CONTRACT AND, IN TURN, RESULTING IN THE LACK OF CAUSE OF ACTION OF PETITIONERS TO CAUSE THE CANCELLATION OF THE HEREIN ENCUMBRANCE.[15]

We sustain the RTC and the CA. Thus, we deny the petition.

Petitioners admitted that they did not pay the stipulated deposit equivalent to two (2) months' rental. Neither did they pay the agreed monthly rentals provided in the lease contract. They, however, justified their non-compliance, claiming that Milagros and respondent refused to deliver possession of the property. Petitioners' justification fails to persuade.

Records show that the possession of the subject property was delivered to petitioners on July 20, 1995.[16] The delivery was confirmed by Ana Labayen when she testified in open court.[17] Despite delivery, petitioners did not pay the stipulated rental deposit and monthly rentals.

Section 14 of the lease contract explicitly provides:

14. Should the LESSEE fail to pay the rentals as herein stipulated, or should she violate any of the terms and conditions of this contract, this contract is automatically cancelled and terminated, and the LESSOR shall have the right to eject the LESSEE from the premises in question and to collect and recover from her all accrued rents, and the ownership of the improvements shall pass the LESSOR or to her assigns without reimbursements of the costs.[18]

Clearly thus, the automatic cancellation took effect, resulting in the termination of the contract of lease.

Ana Labayen's excuse that Milagros Serafica was not around to receive her payments was obviously an afterthought, concocted in a futile attempt to justify her non-compliance.

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[15] *Id.* at 17.

[16] *Id.* at 142.

[17] See CA Decision, *id.* at 47.

[18] *Rollo*, p. 59.

It is clear that at the time of the filing of the petition for cancellation of encumbrance before the court *a quo*, the lease contract already lost its efficacy. Accordingly, there is no basis to save its annotation on respondent's title. The RTC, therefore, correctly dismissed petitioners' action for cancellation of encumbrance, and the CA committed no reversible error in sustaining the RTC.

As the CA had taken pains to demonstrate:

> with the automatic cancellation of the lease contract, pursuant to the provision of par. 14 *supra*., [petitioner] ANA LABAYEN lost her status as a lessee of the subject property. Perforce no damage or prejudice would be suffered by [petitioners] in the cancellation of the encumbrance of lease contract in [respondent's] title.
>
> The fact that the document purportedly canceling the lease contract was forged is of no moment. There could not have been a violation of a right as a result of such forgery, because there was never a right to talk about in so far as the [petitioners] are concerned. Otherwise put, for [petitioners'] failure to preserve the effectivity of the lease contract, [petitioners] are considered mere strangers to the subject property, who do not have any legal interest therein. Thus, the cancellation of the encumbrance of lease contract on [respondent's] title would not cause [petitioners] any damage or injury, just as no benefit could be obtained by them from its retention.[19]

In any event, we note that the period of lease ended last August 15, 2007. With the expiration of the contract, petitioners' purported right to maintain the inscription of the lease contract on respondent's title no longer exists; hence, the said inscription may now be cancelled.

Petitioners also insist on entitlement to moral and exemplary damages as well as attorney's fees, claiming that they suffered mental anguish, sleepless nights and disturbance as a result of the cancellation of lease contract and its annotation on respondent's title. They aver that respondent, along with Alice Suratos, acted fraudulently in the execution and registration of the deed of cancellation of contract of lease.

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[19] *Id.* at 48-49.

It is settled that, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff — a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law; thus, there must first be a breach before damages may be awarded, and the breach of such duty should be the proximate cause of the injury.[20]

It is not enough that one suffered sleepless nights, mental anguish or serious anxiety as a result of the actuations of the other party. It is also required that a culpable act or omission was factually established, that there is proof that the wrongful act or omission of the defendant is the proximate cause of the damage sustained by the claimant, and that the case is predicated on any of the instances expressed or envisioned by Articles 2219 and 2220 of the Civil Code.[21]

In this case, petitioners failed to establish any wrongful act on the part of respondent which would warrant the award of damages in their favor.

The RTC and the CA were unanimous in their findings that respondent had nothing to do with the forgery, and we see no reason to disturb such findings.

The termination of the contract of lease and the consequent cancellation of its annotation on respondent's title were due to petitioners' non-compliance with the stipulations in the contract. Petitioners cannot now pass the blame to respondent. As quoted earlier, the contract contained the stipulation that the contract could be automatically cancelled if the lessee failed to pay the rentals or to comply with the stipulations in the contract. It was within the right of respondent, as lessor, to avail himself of the

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[20] *Aznar v. Citibank, N.A. (Philippines)*, G.R. No. 164273, March 28, 2007, 519 SCRA 287, 311.

[21] *Id.* at 312.

automatic termination clause provided for in the contract. Thus, whatever damages petitioners may have suffered as a consequence of the termination of the lease contract and the consequent cancellation of its annotation in respondent's title would have to be borne by them alone.

As the Court pronounced in *BPI Express Card Corporation v. Court of Appeals*:[22]

> We do not dispute the findings of the lower court that private respondent suffered damages as a result of the cancellation of his credit card. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*.[23]

To repeat, petitioners cannot, therefore, claim damages from respondent.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 73866 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[22] 357 Phil. 262 (1998).

[23] *Id.* at 275-276.

EN BANC

[G.R. No. 182084. October 6, 2008]

LIBRADO M. CABRERA, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and MICHAEL D. MONTENEGRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED. — In applying for a *certiorari* writ, it is imperative for the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because "grave abuse of discretion" is the capricious and whimsical exercise of judgment that amounts to lack of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility — so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law. "Grave abuse of discretion" arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.

2. POLITICAL LAW; ELECTION LAWS; RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS (AM NO. 07-4-15-SC); RULES ON PRELIMINARY CONFERENCE; APPLICATION IN CASE AT BAR. — The nullification by the COMELEC of the RTC's orders and the consequent dismissal of Election Case No. 1-2007 are in accordance with the express mandate of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials (A.M. No. 07-4-15-SC), Rule 9, Sections 4, 5 and 6 of which provide as follows: SEC. 4. Preliminary conference brief. — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following: 1. A summary of admitted facts

and proposed stipulation of facts; 2. The issues to be tried or resolved; 3. The pre-marked documents or exhibits to be presented, stating their purpose; 4. **A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;** 5. The number and names of the witnesses, their addresses and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination; 6. **A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;** 7. The proposed number of revision committees and names of their revisors and alternate revisors; and 8. **In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.** SEC. 5. Failure to file brief. — **Failure to file the brief or to comply with its required contents shall have the same effect as failure to appear at the preliminary conference.** SEC. 6. Effect of failure to appear. —The failure of the protestant or counsel to appear at the preliminary conference **shall be cause for dismissal, *motu proprio*, of the protest or counter-protest.** The failure of the protestee or cousel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present evidence *ex parte* and render judgment based on the evidence presented. Clearly, the said Rules command, in no uncertain terms, the filing of the preliminary conference brief and compliance with the required contents of the said brief. By the Rules' express language, the failure to comply therewith shall have the same effect as failure to appear at the preliminary conference which, in turn, shall be a sufficient cause for the dismissal of the protest.

3. ID.; ID.; ID.; ID.; COMPLIANCE THEREWITH; OBLIGATORY. — The Court has painstakingly crafted A.M. No. 07-4-15-SC precisely to curb the pernicious practice of prolonging election protests, a sizable number of which, in the past, were finally resolved only when the term of office was about to expire, or worse, had already expired. These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts. Thus, we emphasize that the preliminary conference and its governing

rules are not mere technicalities which the parties may blithely ignore or trifle with. They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Marcos Ochoa Serapio and Tan Law Firm for private respondent.

D E C I S I O N

NACHURA, *J.*:

The petitioner in this case seeks from this Court the issuance of a *certiorari* writ to annul and modify, for having been issued allegedly with grave abuse of discretion, the November 20, 2007 Resolution[1] of the Commission on Elections (COMELEC) First Division in SPR No. 18-2007, and the March 12, 2008 Resolution[2] of the COMELEC *en banc* affirming the said division ruling.

The relevant antecedent facts and proceedings follow.

Dissatisfied with the results of the mayoralty race in Taal, Batangas during the May 14, 2007 National and Local Elections, petitioner Librado M. Cabrera (Cabrera), the candidate who placed second with 10,272 votes, filed an election protest against private respondent Michael D. Montenegro (Montenegro), the winning candidate who garnered 10,742 votes. The case was docketed as Election Case No. 1-2007 with the Regional Trial Court (RTC) of Taal, Batangas, Branch 86.[3]

Following Montenegro's filing of an answer with counterclaim, the trial court set the case for preliminary conference and required

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[1] *Rollo*, pp. 23-29.

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

[3] *Id.* at 7.

the parties to submit their respective preliminary conference briefs. On June 12, 2007, the parties filed the requisite pleadings.[4]

Finding fatal defects in Cabrera's preliminary conference brief, Montenegro, on June 15, 2007, moved for the dismissal of the protest on the following grounds: (1) Cabrera did not serve a copy of his preliminary conference brief to Montenegro at least one day before the scheduled conference; and (2) Cabrera did not comply with Rule 9, Section 4 of A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials,[5] particularly on the required contents of the preliminary conference brief.[6]

Unconvinced by Montenegro's contention, the trial court denied the motion to dismiss, and his subsequent motion for reconsideration.[7] This prompted him to bring the issue to the COMELEC via a petition for *certiorari* and prohibition in SPR No. 18-2007.[8]

In the assailed November 20, 2007 Resolution,[9] the First Division of the Commission granted Montenegro's petition, annulled and set aside the orders of the trial court denying the motion to dismiss, directed it to cease and desist from continuing with the proceedings in the election protest and consequently to dismiss the same. The First Division ruled that Rule 9 of the aforementioned Rules of Procedure in Election Contests, providing for the dismissal of the protest in case of failure to state in the preliminary conference brief its required contents, was mandatory in character and would leave no room for the exercise of discretion on the part of the trial judge. Given that Cabrera admitted his failure to include the following in the Protestant's Brief for Preliminary Conference[10] — (1) a manifestation of his having

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[4] *Id.* at 24-25.

[5] Promulgated on April 24, 2007 and became effective on May 15, 2007.

[6] *Rollo*, p. 25.

[7] *Id.* at 25-26.

[8] *Id.* at 26.

[9] *Supra* note 1.

[10] *Rollo*, pp. 53-57.

availed, or his intention to avail, of discovery procedures or referral to commissioners; (2) a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and (3) in case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed — the trial court gravely abused its discretion in denying the motion to dismiss. Mere substantial compliance would not suffice to cure the obvious omissions because the rules demand strict compliance.[11]

Aggrieved, Cabrera moved for the reconsideration of the division ruling. The COMELEC *en banc*, however, denied his motion in the further challenged March 12, 2008 Resolution.[12] Left with no other recourse, he instituted the instant petition for *certiorari* before this Court on the following grounds:

> 5.1. The Commission on Elections (First Division) and the *En Banc* grieviously erred in their Resolutions of November 20, 2007 and March 12, 2008, respectively, when they dismissed the election protest case pending before the Regional Trial Court, Branch 86, Taal, Batangas, without taking into consideration the fact that proceedings in said protest case had already gone halfway with protestee/private respondent actively participating therein.
>
> 5.2. The Commission (First Division) and the *En Banc*, in rendering the Resolutions of November 20, 2007 and March 12, 2008, respectively, committed grave abuse of discretion tantamount to lack of, or excess of jurisdiction when they

[11] *Id.* at 26-29. The dispositive portion of the COMELEC First Division's resolution reads:

> WHEREFORE, premises considered, the Commission resolves to GRANT the petition. Consequently, the Resolutions dated June 20 and 28, 2007, denying [private respondent's] Motion to Dismiss and Motion for Reconsideration are ANNULLED and SET ASIDE.
>
> ACCORDINGLY, Presiding Judge Juanita G. Areta of Branch 86, Taal, Batangas is hereby directed to CEASE and DESIST from continuing with the proceedings in Election Protest Case No. 1-2007 entitled "*Librada M. Cabrera v. Michael D. Montenegro*" as the same must be DISMISSED.
>
> SO ORDERED. (*Id.* at 29.)

[12] *Supra* note 2.

> resolved to consider as ground for the dismissal of the election protest case, the omission in Petitioner's Preliminary Conference Brief of matters which even the New Rules of Procedure allows the exercise of option either to include or omit.[13]

We dismiss the petition.

In applying for a *certiorari* writ, it is imperative for the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because "grave abuse of discretion" is the capricious and whimsical exercise of judgment that amounts to lack of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility — so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law. "Grave abuse of discretion" arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.[14]

In the instant case, the petitioner has utterly failed to show to the Court that the COMELEC, in issuing the assailed resolutions, acted capriciously, whimsically and arbitrarily, such that its act is annullable by the extraordinary writ of *certiorari*.

The nullification by the COMELEC of the RTC's orders and the consequent dismissal of Election Case No. 1-2007 are in accordance with the express mandate of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials (A.M. No. 07-4-15-SC),[15] Rule 9, Sections 4, 5 and 6 of which provide as follows:

> SEC. 4. Preliminary conference brief. — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the

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[13] *Rollo*, p. 12.

[14] *Fernandez v. Commission on Elections*, G.R. No. 171821, October 9, 2006, 504 SCRA 116, 119.

[15] *Supra* note 5.

preliminary conference, their respective briefs which shall contain the following:

1. A summary of admitted facts and proposed stipulation of facts;
2. The issues to be tried or resolved;
3. The pre-marked documents or exhibits to be presented, stating their purpose;
4. **A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners**;
5. The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
6. **A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case**;
7. The proposed number of revision committees and names of their revisors and alternate revisors; and
8. **In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed**.

SEC. 5. Failure to file brief. — **Failure** to file the brief or **to comply with its required contents shall have the same effect as failure to appear at the preliminary conference**.

SEC. 6. Effect of failure to appear. — The failure of the protestant or counsel to appear at the preliminary conference **shall be cause for dismissal, motu proprio, of the protest or counter-protest**. The failure of the protestee or counsel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present evidence *ex parte* and render judgment based on the evidence presented.[16]

Clearly, the said Rules command, in no uncertain terms, the filing of the preliminary conference brief and compliance with

[16] Emphasis supplied.

the required contents of the said brief. By the Rules' express language, the failure to comply therewith shall have the same effect as failure to appear at the preliminary conference which, in turn, shall be a sufficient cause for the dismissal of the protest.

As the petitioner himself admitted, his preliminary conference brief did not contain essential statements required by the Rules, namely: a manifestation of his having availed or intention to avail of discovery procedures or referral to commissioners; a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and, in the event the protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed. The petitioner's abject disregard of the express mandate of the Rules must bear dire consequences, for, following the aforesaid Rules, his protest must now be dismissed. We, therefore, find no abuse of discretion, much more a grave one, on the part of the COMELEC, when it imposed the sanction prescribed in the Rules.

Petitioner seeks to justify his failure to comply with the Rules by contending that after all, he will not avail of discovery procedures or referral to commissioners; he does not intend to withdraw protested precincts; and he does not seek the examination, verification or re-tabulation of election returns. Thus, petitioner argues that the absence in his preliminary conference brief of any statement on these specific content items may be interpreted as an expression of "no intent," *i.e.*, that he does not intend to avail of the options open to him under each item. In that sense, then there would be no real imperative for the petitioner to manifest his response to the query posed by each content item. Accordingly, petitioner concludes, the omission of these items from his preliminary conference brief is of no moment.

The Court, however, observes that these proffered excuses are contradicted by the petitioner's preliminary conference brief[17] itself, which contains the following assertions: (1) protestant is to present 22 witnesses to testify on alleged irregularities in the

[17] *Supra* note 10.

voting and counting in 22 precincts;[18] (2) the witnesses will further testify that votes for the protestant were not entered in the election returns;[19] and (3) protestant shall also present as documentary evidence the election returns.[20]

The petitioner's commitment that he does not seek the examination, verification or re-tabulation of election returns is belied by the preliminary conference brief's statement that the protestant shall present the election returns as documentary evidence, and that he will present witnesses who will testify that the entries thereon are erroneous. Clearly, the testimonies of these witnesses will entail the examination or verification of the election returns. Likewise, the petitioner's undertaking that he does not intend to withdraw any of the protested precincts appears inconsistent with the allegation in the preliminary conference brief that protestant will present 22 witnesses (who served as watchers) to give evidence on alleged irregularities in the voting and counting in 22 precincts. Considering that there is a total of 142[21] precincts in the locality, and in fact, the ballots in 88 precincts had already been revised by the trial court,[22] the probability is great that petitioner may have to withdraw some precincts from his protest.

The Rules should not be taken lightly. The Court has painstakingly crafted A.M. No. 07-4-15-SC precisely to curb the pernicious practice of prolonging election protests, a sizable number of which, in the past, were finally resolved only when the term of office was about to expire, or worse, had already expired. These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts.[23] Thus, we emphasize that

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[18] *Rollo*, pp. 55-56.

[19] *Id.* at 56.

[20] *Id.* at 54.

[21] *Id.* at 53.

[22] *Id.* at 18.

[23] See the preliminary statement of A.M. No. 07-4-15-SC.

the preliminary conference and its governing rules are not mere technicalities which the parties may blithely ignore or trifle with.[24] They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed.

WHEREFORE, premises considered, the petition for *certiorari* is *DISMISSED*. The November 20, 2007 Resolution of the Commission on Elections First Division and the March 12, 2008 Resolution of the COMELEC *en banc* in SPR No. 18-2007 are *AFFIRMED***.**

SO ORDERED.

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

Corona, J., on leave.

THIRD DIVISION

[G.R. No. 182232. October 6, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NENITA B. HU,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT AND ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS. — Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage

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[24] See *Vera v. Rigor*, G.R. No. 147377, August 10, 2007, 529 SCRA 729, 734.

in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code. Recruitment and placement is "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement." The crime becomes Illegal Recruitment in Large Scale when the foregoing two elements concur, with the addition of a third element — the recruiter committed the same against three or more persons, individually or as group. A conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons.

2. ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE NOT ESTABLISHED IN CASE AT BAR. — In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.,* "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence. In the case at bar, the prosecution failed to adduce sufficient evidence to prove that illegal recruitment was committed against three or more persons. What we have uncovered upon careful scrutiny of the records was the fact that illegal recruitment was committed against only one person; that is, against Garcia alone. **Illegal recruitment cannot successfully attach to the allegations of Panguelo, Abril and Orillano, since they testified that they accomplished their pre-employment requirements through Brighturn from June 2001 up to October of the same year, a period wherein Brighturn's license to engage in recruitment and placement was still in full force and effect.** While there were six private complainants in this case, four of whom were

presented during the trial, the prosecution, nonetheless, failed to establish that Hu engaged in illegal recruitment acts against at least three of these complainants. In offenses in which the number of victims is essential, such as in the present petition, failure of the prosecution to prove by convincing evidence that the offense is committed against the minimum number of persons required by law is fatal to its cause of action. Underscoring the significance of the number of victims was the disquisition of justice Florenz Regalado in *People v. Ortiz-Miyake*: **It is evident that in illegal recruitment cases, the number of persons victimized is determinative. Where illegal recruitment is committed against a lone victim, the accused may be convicted of simple illegal recruitment which is punishable with a lower penalty under Article 39(c) of the Labor Code.** Corollarilly, where the offense is committed against three or more persons, it is qualified to illegal recruitment in large scale which provides a higher penalty under Article 39(a) of the same Code.

3. ID.; ID.; ID.; CIVIL OBLIGATION TO RETURN COLLECTED MONEY WITH INTEREST SUBSISTS. — Failure of the prosecution to prove the guilt of Hu beyond reasonable doubt does not absolve her of her civil obligation to return the money she collected from private complaints Panguelo, Abril and Orillano, plus legal interest in accordance with our ruling in *Domagsang v. Court of Appeals*. There, the prosecution failed to sufficiently establish a case to warrant a conviction, but clearly proved a just debt owed to the private complainant. Thus, the accused was ordered to pay the face value of the check with 12% legal interest per annum, reckoned from the filing of the information until the finality of the judgment. It is well settled that acquittal based on reasonable doubt does not preclude an award for civil damages. The judgment of acquittal extinguishes the liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, civil liability is not extinguished where the acquittal is based on lack of proof beyond reasonable doubt, since only preponderance of evidence is required in civil cases. There appears to be no sound reason to require that a separate action be still filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings. In the present case, the prosecution explicitly proved that private complainants

parted with substantial amounts of money upon the prodding and enticement of Hu on the false pretense that she had the capacity to deploy them for employment abroad. In the end, private complainants were not able to leave for work abroad or get their money back.

4. ID.; ID.; ID.; CRIME OF ESTAFA MAY PROSPER WITH THE ELEMENT OF DECEIT ESTABLISHED. — Neither does her acquittal herein exempt Hu from subsequent criminal prosecution for estafa provided that deceit, which is an essential element of estafa, be proven by the prosecution. Apparently, Hu deluded private complainants into believing that she had the capacity to send them abroad for employment. Through this hoax, she was able to convince private complainants to surrender their money to her in the vain hope, as it turned out, of securing employment abroad.

5. ID.; ID.; ACT OF REFERRAL INCLUDED IN RECRUITMENT; PROOF OF PAYMENT IS IRRELEVANT. — The act of referral, which means the act of passing along or forwarding an applicant after an initial interview to a selected employer, placement or bureau is included in recruitment. Undoubtedly, the act of Hu in referring Garcia to another recruitment agency squarely fell within the purview of recruitment that was undertaken by Hu after her authority to recruit and place workers already expired on 17 December 2001. Failure of Garcia to present proof of payment is irrelevant. The absence of receipts in the case of illegal recruitment does not warrant the acquittal of the appellant and is not fatal to the prosecution's case. As long as the prosecution is able to establish through credible and testimonial evidence, as in the case at bar, that the appellant had engaged in illegal recruitment, a conviction for the offense can be very well justified.

6. ID.; ILLEGAL RECRUITMENT; PENALTY; PROPER PRISON PENALTY APPLYING THE INDETERMINATE SENTENCE LAW AND PROPER CIVIL PENALTY IN CASE AT BAR. — Under Section 7(a) of Republic Act No. 8042, simple illegal recruitment is punishable by imprisonment of not less than six (6) years and one (1) day but not more than twelve years and a fine of not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00). Section 1 of the Indeterminate Sentence Law provides that if the offense is punishable by a special law, as

in this case, the court shall impose on the accused an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum of which shall not be less than the minimum term prescribed by the same. Accordingly, a penalty of eight (8) to twelve (12) years of imprisonment should be meted out to Hu. In addition, a fine in the amount of ₱500,000.00; and indemnity to private complainants — Abril in the amount of ₱44,000.00, Panguelo in the amount of ₱50,000.00, Garcia in the amount of ₱60,000.00 and Orillano in the amount of ₱50,000.00, with 12% legal interest per annum, reckoned from the filing of the information until the finality of the judgment — is imposed.

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.*:

This is a Petition for Review on *Certiorari* filed by accused-appellant Nenita B. Hu (Hu) seeking to reverse and set aside the Decision[1] of the Court of Appeals dated 9 October 2007 in CA-G.R.-CR.-H.C. No. 02243, affirming with modification the Decision[2] dated 4 January 2005 of the Regional Trial Court (RTC) of Makati City, Branch 66, in Criminal Case No. 03-356. The RTC in its Decision found Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale, as defined and penalized under Section 7(b) of Republic Act No. 8042,[3] and accordingly, sentenced her to suffer the penalty of life imprisonment, to pay the fine of ₱500,000.00, and to indemnify

[1] Penned by Associate Justice Jose L. Sabio with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 2-21.

[2] Penned by Judge Rommel O. Baybay.

[3] Migrant Workers and Overseas Filipinos Act of 1995.

private complainants Paul Abril (Abril), Joel Panguelo (Panguelo) and Evangeline Garcia (Garcia) in the amounts of ₱44,000.00, ₱50,000 and ₱50,000, respectively. The decretal part of the assailed Court of Appeals Decision reads:

> Wherefore, in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Makati City, Branch 66, in Criminal Case No. 03-856, finding appellant Nenita B. Hu, guilty beyond reasonable doubt of the crime charged, is hereby **AFFIRMED with MODIFICATION.**
>
> As modified, the award of actual damages in the amount of ₱50,000 in favor of Evangeline Garcia, is **DELETED.**[4]

The antecedent facts are as follows:

An Information[5] for Illegal Recruitment in Large Scale was filed against Hu and Ethel V. Genoves (Genoves) which reads:

> The undersigned Prosecutor accuses Ethel V. Genoves a.k.a. Merry Ann Genoves and Nenita B. Hu, of the crime of Violation of Section 6 penalized under Section 7(b) of RA 8042[6] (Illegal Recruitment in Large Scale) committed as follows:
>
> That on or about the 9th day of October 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them helping and aiding one another, did then and there willfully, unlawfully and feloniously recruit, promise employment/ job placement abroad for an overseas employment and collect fees from the following persons to wit:
>
> | | |
> |---|---|
> | NOEL P. DELAYUN | JOEY F. SILAO |
> | JOEL U. PANGUELO | PAUL C. ABRIL |
> | EVANGELINE E. GARCIA | ERIC V. ORILLANO |
>
> thus in large scale amounting to economic sabotage without any license or authorized by the POEA of the Department of Labor and Employment to recruit workers for an overseas employment.

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[4] *Rollo*, pp. 19-20.

[5] Records, pp. 1-2.

[6] Migrant Workers and Overseas Filipino Act of 1995.

Upon arraignment, Hu assisted by counsel entered a plea of not guilty while Genoves remained at large.[7] Subsequently, trial on the merits ensued. While the Information for illegal recruitment named several persons as having been promised jobs by Hu and Genoves, only four of them — Panguelo, Garcia, Abril and Orillano — testified.

Hu was the President of Brighturn International Services, Inc. (Brighturn), a land-based recruitment agency duly licensed by the Philippine Overseas Employment Agency (POEA) to engage in the business of recruitment and placement of workers abroad, with principal address at No. 1916 San Marcelino St., Malate, Manila. Brighturn was authorized by the POEA to recruit, process and deploy land-based workers for the period 18 December 1999 to 17 December 2001.[8]

Genoves worked as a consultant and marketing officer of Brighturn. Aside from her stint at Brighturn, Genoves was also connected with Riverland Consultancy Service (Riverland), another recruitment agency located at Room No. 210, LPL Building, Sen. Gil Puyat Avenue, Makati City.

Private complainants Orillano, Panguelo, Abril and Garcia sought employment at Brighturn for the positions of factory worker and electronic operator in Taiwan.[9] Notwithstanding private complainants' compliance with all of the pre-employment requirements, including the payment of placement fees, they were not able to leave the country to work abroad.

Sometime in June 2001, Panguelo was informed by a friend that Brighturn was hiring factory workers for Taiwan. When Panguelo went to Brighturn, he was promised employment abroad by Hu for ₱50,000.00. Upon Hu's instruction, Panguelo paid in full the placement fee in the amount of ₱50,000.00 to Genoves. The payment was evidenced by an Official Receipt dated 16 October 2001 bearing Genoves' signature. Panguelo waited for

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[7] CA *rollo*, p 20.

[8] TSN, 17 March 2005, pp. 4-8.

[9] CA *rollo*, pp. 20-22.

three years to be deployed to Taiwan. His waiting was all for naught. Thus, Panguelo decided to abort his application and demanded from Hu the return of the amount he paid for the placement fee, but Hu could no longer return the money.[10]

Also sometime in September 2001, Abril went to Brighturn to apply as a factory worker in Taiwan. At Brighturn, Abril was entertained by Hu who oriented him on the necessary requirements for application which included a valid passport, National Bureau of Investigation (NBI) Clearance and ID pictures. After complying with the documentary requirements, Abril was required by Hu to pay the placement fee to Genoves in the amount of ₱44,000.00. As shown in Official Receipts dated 9 October 2001 and 26 October 2000, which were signed by Genoves, Abril paid the whole amount of ₱44,000.00 as placement fee. Abril was assured by Hu that he would be deployed to Taiwan by December 2001 which was subsequently reset to April 2002. Despite several postponements, Abril was not able to leave the country.[11]

For his part, Orillano came to know of Brighturn thru Genoves. Orillano was interviewed at Brighturn by a Taiwanese principal in October 2001. After the interview, Hu informed Orillano to submit a medical certificate, NBI clearance and passport; and to pay the requisite placement fee in the amount of ₱50,000.00. Believing that Hu could send him abroad, Orillano faithfully complied with these requirements including the placement fee, the payment of which was made to Genoves at Brighturn's office. Despite such payment, however, Orillano was not able to leave the country.[12]

Garcia suffered the same fate as her co-applicants. In April 2002, Garcia applied as Electronic Operator at Brighturn wherein she was entertained by Hu who informed her that Brighturn's license was suspended. Garcia was then referred by Hu to Best

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[10] TSN, 11 March 2004, pp. 1-28.

[11] TSN, 4 March 2004, pp. 1-28.

[12] TSN, 15 April 2004, pp. 1-21.

One International (Best One), another recruitment agency likewise located in Malate, Manila. While Garcia was told by Hu that the processing of her documents would be done at Best One, the placement fee, however, should be paid at Brighturn. Accordingly, the amount of ₱60,000.00 was paid by Garcia to Hu and Genoves as placement fee upon Hu's instruction. Almost predictably, the promise of an employment abroad never came to pass.[13]

When Hu was not able to refund the amounts paid as placement fees upon demand, private complainants went to NBI to file a complaint for illegal recruitment against Hu and Genoves.

For her defense, Hu claimed that she was the President of Brighturn, a duly authorized land-based recruitment agency. Brighturn had foreign principals in Taiwan who were looking for skilled individuals willing to work in a foreign country. Hu alleged that Brighturn had an established recruitment procedure wherein applicants were only required to pay the corresponding placement fees after the POEA had already approved their employment contracts. According to Hu, announcements were posted all over Brighturn's premises warning job applicants to pay placement fees only to the cashier. After the expiration of its license issued by the POEA on 18 December 1999, Brighturn failed to pursue its application for renewal due its inability to post the required cash bond. Brighturn was thus constrained to refer all pending applications to Best One.[14]

Hu admitted knowing the private complainants because these individuals went to her office demanding the return of their placement fees by showing their official receipts. Hu averred that when she examined such receipts, she found that private complainants paid their placement fees to Riverland and not to Brighturn as shown in the heading of the said receipts which bore the name and address of Riverland and its proprietress, Genoves. Hu denied knowing Genoves.[15]

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[13] TSN, 25 March 2004, pp. 1-28.

[14] TSN, 17 March 2005, pp. 1-17.

[15] *Id*.

On 4 January 2005, the trial court rendered a Decision[16] finding Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Nenita Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale under Section 6 and 7(b) of Republic Act No. 8042, and, accordingly, sentences the accused to suffer the penalty of life imprisonment, pay the fine of ₱500,000.00 and to indemnify private complainants Paul Abril in the amount of ₱44,000.00, Joel Panguelo in the amount of ₱50,000.00 and Evangeline Garcia in the amount of ₱50,000.00.

The Court of Appeals, in its Decision[17] dated 9 October 2007, confirmed the presence of all the elements of illegal recruitment in large scale, and thereby affirmed the conviction of Hu with the modification that the amount of actual damages awarded to Garcia in the amount of ₱50,000.00 be deleted.

Hence, this Petition raising the sole issue of:

> WHETHER OR NOT THE LOWER COURT ERRED IN FINDING HU GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL RECRUITMENT IN LARGE SCALE.

Hu was charged with and convicted by the trial court of the crime of Illegal Recruitment in Large Scale, which conviction was affirmed by the Court of Appeals. The appellate court found that Hu made enticing, albeit empty promises, which moved private complainants to part with their money and pay the placement fee.

For its part, the Solicitor General joined the lower courts in finding that Hu was indeed guilty of Illegal Recruitment in Large Scale. According to the Solicitor General, all the elements of illegal recruitment in large scale had been established beyond reasonable doubt.[18]

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[16] CA *rollo*, pp. 20-25.

[17] *Id.* at 103-122.

[18] *Id.* at 79-97.

We cannot sustain the conviction for illegal recruitment in large scale.

Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code.[19] Recruitment and placement is "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."[20]

The crime becomes Illegal Recruitment in Large Scale when the foregoing two elements concur, with the addition of a third element — the recruiter committed the same against three or more persons, individually or as group.[21]

A conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons.[22]

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of

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[19] *People v. Gutierrez,* 466 Phil. 609, 622 (2004).

[20] Article 13(b) of the Labor Code of the Philippines.

[21] *Id*.

[22] *People v. De la Piedra*, 403 Phil. 31, 58 (2001).

appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[23]

In the case at bar, the prosecution failed to adduce sufficient evidence to prove that illegal recruitment was committed against three or more persons. What we have uncovered upon careful scrutiny of the records was the fact that illegal recruitment was committed against only one person; that is, against Garcia alone. **Illegal recruitment cannot successfully attach to the allegations of Panguelo, Abril and Orillano, since they testified that they accomplished their pre-employment requirements through Brighturn from June 2001 up to October of the same year,**[24] **a period wherein Brighturn's license to engage**

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[23] *People v. Corpuz*, 459 Phil. 100, 112 (2003).

[24] On 4 March 2004, Abril testified that he applied for employment at Brighturn in September 2001 and paid his placement fee in October of the same year, to wit:

Fiscal: In September of 2001, do you recall any undertaking that is significant to your life, Mr. Witness?

Witness: Yes, sir. I applied in one of the agency in Brighturn.

Q: For what position?
A: As factory worker, sir.
Q: Where?
A: In Taiwan sir.
x x x x x x x x x
Q: How were you supposed to give her as placement fee?
A: I gave her Forty-four thousand pesos sir.
Q: Where did you give her this amount?
A: Riverland Consultancy in LPL Bldg. In Gil Puyat, Makati City.
Q: Do you have proof of this?
A: Yes sir.

Fiscal: Witness is handing to this Prosecutor a Xerox copy of two official receipts date October 9 and October 26, 2001 which we ask that these be marked in evidence as Exh. C and D. (TSN, 4 March 2004, pp. 5-9.)

On 11 March 2004, Panguelo also testified that he applied for overseas employment thru Brighturn in June 2001 and paid his placement fee in 16 October 2001, thus:

Fiscal: In the year 2001 of June, do you recall if you had employment then?

Witness: None, sir.

Q: And do you recall having looked for work at that time?
A: Yes, sir.
Q: Where did you apply for work at that time?
A: In Brighturn.
x x x x x x x x x
Q: And when you went to this office in Brighturn, to whom did you talk about your application for work, Mr. Witness?
A: Ms. Hu.
x x x x x x x x x
Q: So, what did the accused tell you about your employment in Taiwan?
A: She told me that I'll be sent abroad to work as a factory worker in Taiwan.
Q: And what did she ask for in return if she did, Mr. Witness?
A: Payment, sir.
Q: How much were you supposed to pay her. Mr. Witness?
A: Fifty Thousand Pesos (Php 50,000.00).
Q: And were you able to pay the accused the said amount?
A: Yes, sir.
Q: Do you have proof, Mr. Witness that you pay the said amount?
A: Yes, sir.
Q: Where it is?
Fiscal: Witness handing to the Prosecutor a Xerox copy of a receipt dated October 16, in the amount of Fifty Thousand Pesos (Php 50,000.00). (TSN, 11 March 2004, pp. 9-13.)

Orillano, on 15 April 2004, likewise testified in open court that the alleged recruitment was undertaken by Hu in October 2001.

Fiscal: Mr. Witness, what is your present occupation?
Witness: Selling vegetables, sir.
Q: In the year 2000, were you already working as a vegetable vendor?
A: No sir, only after the incident happened.
Q: What incident are you talking about, Mr. Witness?
A: When I was victimized by illegal recruitment, sir.
Q: What year is this?
A: 2001, sir.
Q: Will you tell this Court how were you victimized by illegal recruiters in this case?
A: In October of 2001, Brighturn International conducted an interview for Taiwan
x x x x x x x x x
Q: During your interview, what were the documents required by the accused?
A: Medical Certificate, picture, and NBI.
Q: What about fee, Mr. Witness?
A: After the submission of the documents, we were required to pay a placement fee.

in recruitment and placement was still in full force and effect. [25]

While there were six private complainants in this case, four of whom were presented during the trial, the prosecution, nonetheless, failed to establish that Hu engaged in illegal recruitment acts against at least three of these complainants. In offenses in which the number of victims is essential, such as in the present petition, failure of the prosecution to prove by convincing evidence that the offense is committed against the minimum number of persons required by law is fatal to its cause of action. Underscoring the significance of the number of victims was the disquisition of Justice Florenz Regalado in *People v. Ortiz-Miyake*[26]:

It is evident that in illegal recruitment cases, the number of persons victimized is determinative. Where illegal recruitment is committed against a lone victim, the accused may be convicted of simple illegal recruitment which is punishable with a lower penalty under Article 39(c)[27] **of the Labor Code.** Corollarily, where the offense is committed against three or more persons, it is qualified to illegal recruitment in large scale which provides a higher penalty under Article 39(a)[28] of the same Code. (Emphasis supplied.)

Regrettably, we cannot affirm the conviction of Hu for the offense of illegal recruitment in large scale. While we strongly

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Q: How much were you required to pay?
A: Php50,000.00, sir.
Q: Where did you pay this ₱50,000.00?
A: To Ms. Ethel Genoves, sir.
Q: Where did you pay?
A: The office of Ms. Ethel Genoves at Makati. (TSN, 15 April 2004, pp. 4-9.)

[25] Brighturn was duly authorized by the POEA to engage in recruitment and placement of workers abroad from the period of 18 December 1999 up to 17 December 2001. (Records, at 130.)

[26] 344 Phil. 598, 608-609 (1997).

[27] Amended by Republic Act No. 8042.

[28] *Id*.

condemn the pervasive proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad, nevertheless, we find the pieces of evidence insufficient to prove the guilt of Hu beyond reasonable doubt. It is unfortunate that the prosecution evidence did not pass the test of reasonable doubt, since the testimonies of its witnesses unveil a contradicting inference — that the recruitment of Panguelo, Abril and Orillano was undertaken by Hu with the required authority from the POEA.

Failure of the prosecution to prove the guilt of Hu beyond reasonable doubt does not absolve her of her civil obligation to return the money she collected from private complaints Panguelo, Abril and Orillano, plus legal interest in accordance with our ruling in *Domagsang v. Court of Appeals.*[29] There, the prosecution failed to sufficiently establish a case to warrant a conviction, but clearly proved a just debt owed to the private complainant. Thus, the accused was ordered to pay the face value of the check with 12% legal interest per annum, reckoned from the filing of the information until the finality of the judgment. It is well settled that acquittal based on reasonable doubt does not preclude an award for civil damages. The judgment of acquittal extinguishes the liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, civil liability is not extinguished where the acquittal is based on lack of proof beyond reasonable doubt, since only preponderance of evidence is required in civil cases. There appears to be no sound reason to require that a separate action be still filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings.[30] In the present case, the prosecution explicitly proved that private complainants parted with substantial amounts of money upon the prodding and enticement of Hu on the false pretense that she had the capacity to deploy them for employment abroad. In the end, private complainants were not able to leave for work abroad or get their money back.

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[29] 400 Phil. 846, 858 (2000).

[30] *Rico v. People*, 440 Phil. 540, 555 (2002).

Neither does her acquittal herein exempt Hu from subsequent criminal prosecution for estafa[31] provided that deceit, which is an essential element of estafa, be proven by the prosecution.[32] Apparently, Hu deluded private complainants into believing that she had the capacity to send them abroad for employment. Through this hoax, she was able to convince private complainants to surrender their money to her in the vain hope, as it turned out, of securing employment abroad.

This leaves us a case of simple illegal recruitment committed against Garcia.

Garcia testified that she applied for employment in Taiwan for the position of Electronic Operator thru Brighturn in April 2002. Due to the alleged suspension of Brighturn's license, Hu referred her to a neighboring agency (Best One), but Hu continued collecting placement fees from her.

The act of referral, which means the act of passing along or forwarding an applicant after an initial interview to a selected employer, placement or bureau, is included in recruitment.[33] Undoubtedly, the act of Hu in referring Garcia to another recruitment agency squarely fell within the purview of recruitment that was undertaken by Hu after her authority to recruit and place workers already expired on 17 December 2001.

Failure of Garcia to present proof of payment is irrelevant. The absence of receipts in the case of illegal recruitment does not warrant the acquittal of the appellant and is not fatal to the prosecution's case. As long as the prosecution is able to establish through credible and testimonial evidence, as in the case at bar,

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[31] Art. 315. x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

[32] *People v. Gallardo*, 436 Phil. 698, 716 (2002).

[33] *Rodolfo v. People*, G.R. No. 146964, 10 August 2006, 498 SCRA 377, 386.

that the appellant had engaged in illegal recruitment, a conviction for the offense can be very well justified.[34]

Irrefragably, the prosecution has proven beyond reasonable doubt the guilt of Hu of the charge of illegal recruitment against Garcia when the former referred the latter to another agency without the license or authority to do so. The trial court gave full credence to the testimony of Garcia, which unmistakably demonstrated how Hu successfully enticed her to part with a considerable amount of money in exchange for an employment abroad which was never realized. This finding was adopted by the appellate court, considering that that the trial court was in the best position to ascertain credibility issues, having heard the witnesses themselves and observed their deportment and manner of testifying during trial.

Aptly, the bare denials of Hu have no probative value when ranged against the affirmative declarations of Garcia, even if the latter failed to present receipts for the payments she had made. In *People v. Villas*,[35] this Court affirmed the conviction of the appellant for illegal recruitment even if private complaints were not able to present any receipt that they paid appellant anything, thus:

> Neither is there merit in the contention of the defense that appellant should be exonerated for failure of the prosecution to present any receipt proving that private complainants paid her anything. The defense argues that a receipt is the best evidence to prove delivery of money and the absence thereof shows that no payment was made.
>
> This argument is not novel. The Court has previously ruled that the absence of receipts evidencing payment does not defeat a criminal prosecution for illegal recruitment. In *People vs. Pabalan* [262 SCRA 574, 30 September 1996], this Court ruled:
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> > "x x x the absence of receipts in a criminal case for illegal recruitment does not warrant the acquittal of the accused and is not fatal to the case of the prosecution. As long as the witnesses had positively shown through their respective testimonies that

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[34] *People v. Dujua*, 466 Phil. 775, 786 (2004).

[35] G.R. No. 112180, 15 August 1997, 277 SCRA 406.

> the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite the want of receipts.
>
> "The Statute of Frauds and the rules of evidence do not require the presentation of receipts in order to prove the existence of recruitment agreement and the procurement of fees in illegal recruitment cases. The amounts may consequently be proved by the testimony of witnesses."

The private complainants have convincingly testified that the accused enticed them to apply and, in actual fact, received payments from them. And to these testimonies, the trial court accorded credence. On the other hand, appellant has not shown any reason to justify a modification or reversal of the trial court's finding.

Our ruling in *People v. Villas*[36] that the absence of receipts in illegal recruitment case does not warrant the acquittal of the accused has been reiterated in several cases.[37] We are not unaware of the proliferation of these scheming illegal recruiters who cunningly rob Filipino workers, desperate to work abroad, of their money in exchange of empty promises. This Court cannot be drawn to the ingenious ploy of these illegal recruiters in withholding receipts from their victims in their vain attempt to evade liability.

In fine, the Court will have to discard the conviction for illegal recruitment in large scale meted out by the RTC, since only one applicant abroad was recruited by Hu without license and authority from the POEA. Accordingly, Hu should be held responsible for simple illegal recruitment only. Hu's unsuccessful indictment for illegal recruitment in large scale, however, does not discharge her from her civil obligation to return the placement fees paid by private complainants.

Under Section 7(a) of Republic Act No. 8042,[38] simple illegal recruitment is punishable by imprisonment of not less than six

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[36] *Id*.

[37] *People v. Gomez*, 381 Phil. 870, 884 (2000); *People v. Villas, id.*; *People v. Billaber*, 465 Phil. 726, 743 (2004); *People v. Sagaydo*, 395 Phil. 538, 549 (2000); *People v. Dujua, supra* note 34; *People v. Jamilosa*, G.R. No. 169076, 23 January 2007, 512 SCRA 340, 352.

[38] Migrant Workers and Overseas Filipinos Act of 1995.

(6) years and one (1) day but not more than twelve years and a fine of not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00).

Section 1 of the Indeterminate Sentence Law provides that if the offense is punishable by a special law, as in this case, the court shall impose on the accused an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum of which shall not be less than the minimum term prescribed by the same. Accordingly, a penalty of eight (8) to twelve (12) years of imprisonment should be meted out to Hu. In addition, a fine in the amount of ₱500,000.00; and indemnity to private complainants — Abril in the amount of ₱44,000.00, Panguelo in the amount of ₱50,000.00, Garcia in the amount of ₱60,000.00 and Orillano in the amount of ₱50,000.00, with 12% legal interest per annum, reckoned from the filing of the information until the finality of the judgment — is imposed.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **P***ARTIALLY GRANTED*. The Decision dated 9 October 2007 of the Court of Appeals in CA-G.R.-CR.-H.C. No. 02243 affirming the conviction of the accused-appellant Nenita B. Hu for the offense of Illegal Recruitment in Large Scale and sentencing her to life imprisonment is hereby *VACATED*. A new Decision is hereby entered convicting the accused-appellant of the offense of Simple Illegal Recruitment committed against private complainant Evangeline Garcia. She is sentenced to suffer the indeterminate penalty of eight (8) years to twelve (12) years of imprisonment. She is ordered to pay a fine in the amount of ₱500,000.00 and to indemnify private complainant Evangeline Garcia in the amount of ₱60,000.00, with 12% interest per annum, reckoned from the filing of the information until the finality of the judgment.

Accused-appellant Nenita B. Hu is likewise ordered to indemnify private complainants Paul Abril in the amount of ₱44,000.00, Joel Panguelo in the amount of ₱50,000.00, and Eric Orillano in the amount of ₱50,000.00, with 12% interest per annum, as reckoned above.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182421. October 6, 2008]

UCPB GENERAL INSURANCE CORPORATION, *petitioner, vs.* **OWNER OF *M/V "SARINDERJIT"* BLUE RIVER NAVIGATION PTE., LTD.; ASIAN TERMINALS, INC.; and TOEPFER INTERNATIONAL ASIA PTE., LTD.,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; COMPROMISES AND ARBITRATION; COMPROMISE AGREEMENT; VALIDITY THEREOF. — A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It contemplates mutual concessions and mutual gains to avoid the expenses of litigation, or when litigation has already begun, to end it because of uncertainty of the result. The process of compromise has long been allowed in our jurisdiction, and in the jurisdiction of other states as well. The validity of the agreement is determined by compliance with the requisites and principles of contracts. Like any other contract, the terms and conditions of a compromise agreement must not be contrary to law, morals, good customs, public policy and public order.

APPEARANCES OF COUNSEL

Conrado R. Ayuyao & Associates for petitioner.
Montilla Law Offices for ATI.
Del Rosario & Del Rosario for Blue River Navigation PTE., Ltd.
Albert Palacios & Associates for Toepfer Int'l., Asia PTE., Ltd.

R E S O L U T I O N

NACHURA, *J.*:

The original Petition for Review on *Certiorari*[1] under Rule 45 filed by United Coconut Planters Bank (UCPB) General Insurance Corporation prays for the reversal of the Court of Appeals (CA) Decision[2] dated February 28, 2008 in CA-G.R. CV No. 87074, which affirmed with modifications the Decision of the Regional Trial Court (RTC) of Manila, Branch 8, dated March 19, 2006, dismissing the complaint against respondents Owner of *M/V "Sarinderjit"*-Blue River Navigation Pte., Ltd., RCS Shipping Agencies., Inc., Asian Terminals, Inc., and Toepfer International Asia Pte., Ltd.

The relevant facts are as follows:

Petitioner filed with the RTC of Manila, Branch 8, a subrogation complaint to recover from respondents the sum of ₱1,234,950.83 it paid to San Miguel Foods for the shortage of 215.778 metric tons of Indian Soya Bean in bulk, out of 4,342.400 metric tons shipped on board *M/V "Sarinderjit"* on or about February 9, 1993. Respondent Blue River Navigation is sued as the carrier-owner of the vessel. Respondent RCS Shipping is sued as general agent, Asian Terminals as arrastre operator at the South Harbor, and Toepfer International as the supplier/shipper.

The complaint alleged that San Miguel Foods had purchased from Toepfer International the 4,342.400 metric tons of Indian

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[1] *Rollo,* pp. 9-29.

[2] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *id.* at 38-50.

Soya Bean in bulk. Toepfer, the seller and supplier, chartered *M/V "Sarinderjit"* and loaded the bulk shipment on board the vessel covered by Bill of Lading No. BEDI-2, with another 3,796.400 metric tons of Indian Soya Bean in bulk consigned to Purefoods Corporation under Bill of Lading No. BEDI-1. The bulk cargoes under the two bills of lading were commingled aboard *M/V "Sarinderjit*." The complaint likewise stated that the shipment was insured by San Miguel Foods against loss in transit with UCPB General Insurance Corporation which issued Marine Policy No. 009-84/117.

Sometime in March 1993, the vessel arrived in Manila and the shipment was discharged by the arrastre operator Asian Terminals, unloaded onto barges alongside the vessel, then the barges were discharged at the terminal, where the bulk shipment was bagged and loaded onto trucks and delivered to the San Miguel Foods warehouse.

Upon delivery at the warehouse, the bagged shipment was weighed and the San Miguel Foods warehouse entry slip listed a shortage of 215.778 metric tons, as only 4,126.622 metric tons were delivered out of the 4,342.400 metric tons listed in Bill of Lading No. BEDI-2. Subsequently, SGS Far East Ltd., an independent surveyor, confirmed the shortage of 215.778 metric tons.

San Miguel Foods filed a claim for the 215.778 metric-ton shortage which petitioner paid in the amount of Php1,234,951.08. In consideration of the settlement, San Miguel Foods executed a release deed subrogating UCPB in its right to recover against all bailees. After demands for reimbursement were not heeded by respondents, petitioner filed the complaint.

After trial on the merits, the trial court rendered a decision dismissing the complaint on the ground that insurance coverage had not been proved, and awarding the respondents attorney's fees plus costs, the dispositive portion reading:

WHEREFORE, Complaint is DISMISSED. Plaintiff UCPB is hereby ordered to pay:

1. The amount of Php50,000.00 for each of the defendants (1) Blue River Navigation Pte. Ltd. / RCS Shipping Agencies Inc. (2) Asian Terminals Inc., and (3) Toepfer International-Asia Pte., Ltd., as attorneys fees; and

2. Costs of suit.

On appeal, the CA affirmed the dismissal of the complaint, but deleted the award of attorney's fees. Petitioner filed a motion for reconsideration, but it was denied in a Resolution dated April 18, 2008.

Aggrieved by the foregoing decisions, UCPB General Insurance Corporation filed this petition.

In a Resolution[3] dated June 30, 2008, we resolved to require the respondents to file their Comment on the instant petition.

Even as the Court awaited the Comment of the respondents, petitioner filed an Omnibus Motion[4] praying, among others, for this Court to render judgment based on a Compromise Agreement[5] entered into by the parties in this case. The substantive portion of the Compromise Agreement states that UCPB General Insurance Corporation shall withdraw the Petition for Review it filed with the Supreme Court, and in reciprocal concession, the respondents shall waive their right to enforce the judgment award of the RTC of Manila in Civil Case No. 94-69615 referring to the costs of suit, as the ₱50,000.00 attorney's fees had been deleted by the CA decision.

The Compromise Agreement reads:

KNOW ALL MEN BY THESE PRESENTS:

That Plaintiff UCPB GENERAL INSURANCE CO., INC., a corporation duly incorporated under the laws of the Republic of the Philippines with principal office at 24th and 25th Floors, LKG Tower, Ayala Ave., Makati City, in Civil Case No. 94-69615 entitled "*UCPB GENERAL INSURANCE CO., INC., plaintiff, vs. OWNER OF MV*

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[3] *Rollo,* p. 66.

[4] *Id.* at 67-69.

[5] *Id.* at 70-73.

"SARINDERJIT," BLUE RIVER NAVIGATION PTE., LTD., RCS SHIPPING AGENCIES, INC., ASIAN TERMINALS INC., AND TOEPFER INTERNATIONAL-ASIA PTE., LTD., defendants" with the Regional Trial Court of Manila, Branch 8; the appellant in CA-G.R. CV No. 87074 entitled *UCPB GENERAL INSURANCE CO., INC., plaintiff-appellant, vs. OWNER OF MV "SARINDERJIT," BLUE RIVER NAVIGATION PTE., LTD., RCS SHIPPING AGENCIES, INC., ASIAN TERMINALS INC., AND TOEPFER INTERNATIONAL-ASIA PTE., LTD., defendants-appellants*" with the Court of Appeals; and the petitioner in G.R. No. 182421 entitled *UCPB GENERAL INSURANCE CO., INC., petitioner, vs. OWNER OF MV "SARINDERJIT," BLUE RIVER NAVIGATION PTE., LTD., RCS SHIPPING AGENCIES, INC., ASIAN TERMINALS INC., AND TOEPFER INTERNATIONAL-ASIA PTE, LTD., respondents*" with the Supreme Court, hereby withdraws its Petition For Review with the Supreme Court, and in return, the defendants-appellants and respondents, waive their right to enforce the judgment award of the Regional Trial Court of Manila, Branch 8 in its Decision dated 19 March 2006.

The above compromise agreement is entered into by the parties to end the litigation and to buy peace.

This instrument is waiver of all the rights and/or causes of action arising from the aforecited cases as between the plaintiff-appellant/ petitioner UCPB GENERAL INSURANCE CO., INC., and defendants-appellants/respondents OWNER OF MV "SARINDERJIT," BLUE RIVER NAVIGATION PTE., LTD., RCS SHIPPING AGENCIES, INC., ASIAN TERMINALS INC., AND TOEPFER INTERNATIONAL-ASIA PTE, LTD.

This instrument may be pleaded as an absolute and final bar to any suit/s or legal/ administrative proceedings in any and all jurisdictions that may hereafter be prosecuted by UCPB GENERAL INSURANCE CO., INC. by OWNER OF MV "SARINDERJIT," BLUE RIVER NAVIGATION PTE., LTD., RCS SHIPPING AGENCIES, INC., ASIAN TERMINALS INC., AND TOEPFER INTERNATIONAL-ASIA PTE., LTD., OR ANYONE claiming by, through, or under them, against any persons or things released herein for any matter or thing referred to herein.

IN WITNESS WHEREOF, UCPB GENERAL INSURANCE CO., INC. has caused this instrument to be signed this 3rd day of July 2008 in the City of Makati, Philippines.

UCPB GENERAL INSURANCE CO., INC.

By:

(Sgd.)
Atty. Francisco M. Nob
Authorized Representative

CONFORME:

(Sgd.)
OWNER OF MV "SARENDERJIT,"
BLUE RIVER NAVIGATION PTE., LTD.
RCS SHIPPING AGENCIES, INC.

(Sgd.)
Atty. Aileen P. Raterta – Montilla Law Office
ASIAN TERMINALS INC.

(Sgd.)
TOEPFER INTERNATIONAL-ASIA
PTE., LTD.[6]

A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[7] It contemplates mutual concessions and mutual gains to avoid the expenses of litigation, or when litigation has already begun, to end it because of uncertainty of the result.[8] The process of compromise has long been allowed in our jurisdiction, and in the jurisdiction of other states as well.[9]

The validity of the agreement is determined by compliance with the requisites and principles of contracts. Like any other contract, the terms and conditions of a compromise agreement

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[6] *Id.* at 71-72.

[7] Civil Code, Art. 2028.

[8] *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75.

[9] *Tanchanco v. Sandiganbayan*, G.R. Nos. 141675-96, November 25, 2005, 476 SCRA 202.

must not be contrary to law, morals, good customs, public policy and public order.[10]

The Court finds that the above Compromise Agreement had been validly executed in accordance with the above requirements.

WHEREFORE, the Omnibus Motion is *GRANTED*. The Compromise Agreement is *APPROVED* and judgment is hereby rendered in accordance therewith. By virtue of such approval, this case is now deemed *TERMINATED*. No pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. L-26112. October 6, 2008]

REPUBLIC OF THE PHILIPPINES, MIGUEL TOLENTINO, SR., ZOILA DE CHAVEZ, DEOGRACIAS MERCADO, MARIANO PONTOJA, GUILLERMO MERCADO, AGAPITO REYES, ISIDRO BESAS, LEONA LACHICA, ELENO MACALINDONG, DIONISIO MACALINDONG, DOROTEO SARA, JOAQUIN CAUANCERAN, VIRGILIO AGUILAR, FELIX DUMAN, PIO BACULI, ANTERO APOLINAR, FLAVIANO CURZADO, ROSENDO IBAÑEZ, ARCADIO GONZALES, FELIX BORJA, and BLAS BASCO, *petitioners, vs.* **HON. JAIME DELOS ANGELES, Judge of the Court of First Instance, Branch III, Balayan, Batangas, AYALA *Y***

[10] *Rivero v. Court of Appeals*, G.R. No. 141273, May 17, 2005, 458 SCRA 714.

CIA and/or HACIENDA CALATAGAN, and ALFONSO ZOBEL, *respondents.*

[G.R. No. L-30240. October 6, 2008]

REPUBLIC OF THE PHILIPPINES, as Lessor, ZOILA DE CHAVEZ, assisted by her husband Col. Isaac de Chavez, DEOGRACIAS MERCADO, ROSENDO IBAÑEZ and GUILLERMO MERCADO, as permitees and/or lessees of public fishponds, *petitioners, vs.* **HON. JUDGE JAIME DELOS ANGELES of the Court of First Instance, Branch III, Balayan, Batangas [later replaced by JUDGE JESUS ARLEGUI], SHERIFF OF BATANGAS, ENRIQUE ZOBEL, and THE REGISTER OF DEEDS OF BALAYAN, BATANGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DISPOSITION OF FINAL DECISION CANNOT BE AFFECTED BY POST-JUDGMENT ORDERS. — The Makalintal Orders (Orders by Judge Roberto Makalintal) are post-judgment orders, *i.e.*, orders issued after the adjudicative task of the court has ended, the court having declared the parties' rights and obligations with respect to the matter under litigation. They draw their life from the final and executory judgment they are implementing and thus cannot limit, vary, interpret, or re-adjudicate the dispositions made by this judgment. They do not have the effect of *res adjudicata* in the same manner that pre-judgment interlocutory orders do not. They do not involve any final "ruling on the merits" as they only implement the court's judgment strictly according to the terms of that judgment. No "finality" is involved since, subject to the time prescribed by the Rules, the matter of execution is always open for as long as the implementation of the judgment remains incomplete. For this reason, there is no provision in the Revised Rules of Court for the entry of judgment of *supposedly* final interlocutory orders and execution stage orders, and no such orders are accepted by any court for entry under Section 2, Rule 36 of the Revised Rules of Court — the provision on Entry of Judgments and Final Orders. The determination of

whether there has been full satisfaction of judgment cannot rest solely on the lower court because the decision on the merits has effectively been **our** decision; we cannot be denied a say on whether **our** decision has been fully satisfied. In blunter terms, the Makalintal Orders cannot effectively bar our ruling on any of the execution and other issues Judge Makalintal took the liberty of disposing in the course of issuing a post-judgment order. The lower court has no jurisdiction to interpret, much less reverse, this Court's final and executory judgment. We enunciated this principle as early as 1922 in *Shioji v. Harvey*. "The inferior court is bound by the decree as the law of the case, and must carry it into execution according to its mandate. They cannot vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded." An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.

2. ID.; ID.; ID.; ID.; DEFIANCE THEREOF IS GRAVE ABUSE OF DISCRETION. — With his post-judgment orders, Judge Makalintal committed the gravest abuse of discretion and even patently acted without jurisdiction. These are acts that in the recent past merited, not only the nullification of the *ultra vires* orders, but administrative sanctions as well for the issuer, as we did in the case of a Labor Arbiter and a retired Commissioner of the National Labor Relations Commission who were suspended in *Quijano v. Bartolabac* for taking the liberty of deviating from this Court's final and executory judgment.

3. ID.; ID.; ID.; ID.; FINALITY OF DECISION; ESSENCE THEREOF, EMPHASIZED. — The CFI decision in Civil Case No. 373 is the judgment that we consistently affirmed and this decision has long become final and executory. Under the **doctrine of finality of judgment** and by operation of law, it has become immutable and should now be respected. Under the **doctrine of *res adjudicata*,** the decision effectively bars a re-litigation of the issues settled with finality, particularly, the titles subject to nullification and reversion. Under the **doctrine of the law of the case**, the CFI decision, as affirmed, is the controlling ruling that should guide further or future action on Civil Case No. 373, specifically, the execution process. This ruling shuts all doors to any objection to the execution

of the affirmed CFI decision that a recalcitrant losing party may still conceive.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Mercedita S. Nolledo for private respondents.
Arsenio R. Reyes for intervenors Heirs of Guillermo Mercado.

R E S O L U T I O N

BRION, *J.*:

We resolve yet another motion for reconsideration in the execution of this 46-year-old decision of the Court of First Instance (*CFI*) of Batangas in Civil Case No. 373. In our Resolution of July 20, 1999, we already expressed our exasperation due to the unfortunate state of the execution of the decision; we then confirmed the various writs we issued and closed with the admonition that no further pleadings would be allowed in the long pending cases. These admonitions, however, have fallen on deaf ears as private respondent Ayala *y* Cia (*Ayala*) once again comes before us, this time to seek the reconsideration of our Resolution of April 15, 2008 requiring Judge Maria Cecilia I. Austria (*Judge Austria*), Acting Presiding Judge of Branch XI of the Regional Trial Court *(RTC)* of Balayan, Batangas, to submit a quarterly progress report on the execution of the judgment in the above-captioned cases. Not without the same exasperation and purely in the spirit of giving Ayala all the opportunities to ventilate its objections, we once again, ***but for the last time***, entertain its motion.

The Antecedents

This case is an annulment of titles proceeding commenced by the Republic of the Philippines (*Republic*) before the CFI of Batangas against Ayala *y* Cia, Alfonso Zobel, Antonio Dizon, Lucia Dizon, Ruben Dizon, Adelaida Reyes, Consolacion D. Degollacion, Artemio Dizon, and Zenaida Dizon. The Republic alleged that the various titles of the defendants (private

respondents herein) illegally included portions of the territorial waters and lands of the public domain when they caused the survey and preparation of a composite plan of Hacienda Calatagan that increased its original area from 9,652.583 hectares (the land area covered by TCT No. 722) to 12,000 hectares. Other than the annulment of titles, the Republic also sought the recovery of possession of areas for which fishpond permits were already issued. One Miguel Tolentino (*Tolentino*) and 22 other fish pond permitees intervened in the case. **The case was docketed as Civil Case No. 373.**

On June 2, 1962, the CFI of Batangas (Judge Damaso S. Tengco) rendered its decision (*CFI Decision*) whose dispositive portion reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> (a) Declaring as null and void Transfer Certificate of Title No. T-9550 (or Exhibit "24") of the Register of Deeds of the Province of Batangas **and other subdivision titles issued in favor of Ayala *y* Cia and/or Hacienda de Catalagan over the areas outside its private land covered by TCT No. 722, which, including the lots in T-9550 (lots 360, 362, 363 and 182), are hereby reverted to public dominion.**

We affirmed the CFI decision with modification in *Republic of the Philippines v. Ayala y Cia* (**G.R. No. L-20950**).[1] (Our modification has no bearing at all on the issues of the annulment of the certificates of title and the reversion of illegally registered lands to the public domain).

A month prior to our decision in G.R. No. L-20950, we decided a closely related case — *Dizon v. Rodriguez* (**G.R. No. L-20300-01**)[2] — in which we found that the land *subdivided* and *registered* by Ayala and its successors-in-interest (for instance, the Dizons) included inalienable lands of the public domain — foreshore lands and territorial waters — belonging to the State. This conclusion was fully supported by the finding

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[1] 14 SCRA 259, May 31, 1965.

[2] 13 SCRA 704, April 30, 1965.

that ***subdivision plan Psd-27941*** (the approved plan for the subdivision of TCT No. 722, on whose basis derivative titles of TCT No. 722 were issued) ***was prepared not in accordance with the technical descriptions in TCT No. 722 but in disregard of it***. This case actually discussed and outlined how the illegal inclusion of inalienable lands of the public domain in the land originally covered by TCT No. 722 came about.

In due course, our decision in G.R. No. L-20950 became final and executory. Thereafter, the Republic and the intervenors moved for the issuance of a writ of execution to enforce the decision. Judge Jaime de los Angeles (*vice* Judge Tengco) denied the motion. The Republic and the intervenors came to us *via* a petition for *certiorari* and *mandamus* to question the order of denial; the case was docketed as *Republic v. De los Angeles,* **G.R. No. L-26112**[3] — one of the cases under which the present motion is being litigated.

We granted the petition and ordered Judge de los Angeles to issue a writ of execution to enforce the decision. On Ayala's subsequent motions, we reconsidered our decision in G.R. No. L-26112 but **did not touch at all the portion of the CFI decision on the annulment of titles and reversion of illegally registered lands and areas to the public domain.** Thus, no scintilla of doubt now exists on the finality and binding effect of the CFI decision on annulment of titles and reversion; these are settled matters after our decisions in G.R. No. L-20950 and G.R. No. L-26112 became final.

Twenty-three years after we rendered our ruling in G.R. No. L-20950 and at least fifteen (15) years from our last Resolution in G.R. No. L-26112, the execution of the annulment and reversion portions of the CFI decision still did not see the light of day. We sought to write *finis* in *Republic v. Delos Angeles* (**G.R. No. L-30420)**[4] to any uncertainty, issue or question on the

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[3] 20 SCRA 608, June 30, 1967.

[4] March 25, 1988, 159 SCRA 264. This case involves the various incidents of an *accion reivindicatoria* with preliminary injunction case filed by the Republic and the intervenor fishpond permittees as a reaction to their threatened ejectment

propriety of executing the *annulment and reversion* portions of the CFI decision. Frustrated with the virtual non-execution of the CFI decision due to Ayala's dilatory pleadings, motions and maneuverings, we took a direct hand at executing the CFI decision by directing the Clerk of this Court to issue the writ. We reiterated our stand on the decision in Civil Case No. 373, and said:

> Contrary to respondent Zobel's assertion, **the 1965 final judgment in favor of the Republic declared as null and void, not only TCT No. 9550, but also "other subdivision titles" issued over the expanded areas outside the private land of Hacienda Calatagan covered by TCT No. 722**. As shown at the outset, after respondents ordered subdivision of the Hacienda Calatagan which enabled them to acquire titles to and "illegally absorb" the subdivided lots which were outside the *hacienda's* perimeter, they converted the same into fishponds and sold them to third parties. But as the Court stressed in the 1965 judgment and time and again in other cases, "it is an elementary principle of law that said areas not being capable of registration, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant." This is crystal clear from the dispositive portion or judgment. . . [of Civil Case No. 373].
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>
> **This final 1965 judgment reverting to public dominion all public lands unlawfully titled by respondent Zobel and Ayala and/or Hacienda Calatagan is now beyond question, review or reversal by any court, although as sadly shown hereinabove, respondents' tactics and technical maneuvers have all these 23 long years thwarted its execution and the Republic's recovery of the lands and waters of the public domain.**[5] [Emphasis supplied.]

Despite these clear terms and their repetition, Ayala has since persisted in frustrating the execution of the final and executory decision.

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by Enrique Zobel, holder of the subdivision titles originating from TCT No. 722. The Supreme Court decided in this case that the lands covered by Zobel's subdivision titles are covered by this Court's decision in G.R. No. 20950.

[5] *Id.*, p. 284.

The current problem traces its immediate roots to the Orders that Judge Roberto Makalintal (*Makalintal Orders*), the predecessor of Judge Austria, issued on August 1, 2000 and November 22, 2000 denying the *alias* writ of execution of Deogracias Mercado and Guillerma Mercado (intervenors in the annulment of titles case, herein called *the Heirs*).

Aggrieved by the Makalintal Orders, Conrado Mercado (*Mercado,* heir of intervenor Deogracias Mercado) filed with us on June 28, 2002 an Urgent Motion for an *Alias* Writ of Execution. We required the Office of the Solicitor General and the private respondent Ayala to comment on Mercado's motion. We also required the Secretary of Environment and Natural Resources to file his Comment on the pending incident. They all did.

In a Resolution dated November 16, 2006, we directed the RTC to proceed with the immediate execution of the CFI decision. On December 17, 2007, Judge Austria issued an order essentially directing the continuation of the execution proceedings of the CFI decision (*Judge Austria's order*). Judge Austria subsequently denied Ayala's motion for reconsideration of this order.

Judge Austria recently wrote us a letter dated March 11, 2008 to inform us of the developments in the execution of the CFI decision and to assure us that the RTC is following the directives of this Court. We noted Judge Austria's letter, but at the same time issued our Resolution of April 15, 2008 whose reconsideration, as stated at the outset, Ayala now seeks.

The Issues

Ayala's motion hews closely to the supporting reasons of the Makalintal Orders and posits that: (1) the judgment has been declared satisfied under the Makalintal Orders; these orders are now final and the CFI decision can no longer be the subject of further execution; (2) after judgment, a trial to determine the subject of the judgment is not allowed and the annulment of the affected Torrens titles cannot be effected except in a direct proceeding under the law, citing Section 48 of P.D. 1529; and (3) Judge Austria's order directing another relocation survey

of the subject property to find the property or properties against which the judgment is to be enforced violates due process.

Our Ruling

After due consideration, we reiterate our directive of November 16, 2006 that denied, albeit impliedly, the validity of the Makalintal Orders.

First, the Makalintal Orders are post-judgment orders, *i.e.*, orders issued after the adjudicative task of the court has ended, the court having declared the parties' rights and obligations with respect to the matter under litigation. They draw their life from the final and executory judgment they are implementing and thus cannot limit, vary, interpret, or re-adjudicate the dispositions made by this judgment.

Second, they do not have the effect of *res adjudicata* in the same manner that pre-judgment interlocutory orders do not.[6] They do not involve any final "ruling on the merits" as they only implement the court's judgment strictly according to the terms of that judgment. No "finality" is involved since, subject to the time limits prescribed by the Rules,[7] the matter of execution is always open for as long as the implementation of the judgment remains incomplete. For this reason, there is no provision in the Revised Rules of Court for the entry of judgment of *supposedly* final interlocutory orders and execution stage orders, and no such orders are accepted by any court for entry under Section 2, Rule 36 of the Revised Rules of Court — the provision on Entry of Judgments and Final Orders — which provides:

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[6] *Perez v. Court of Appeals*, GR No. 107737. October 1, 1999, 316 SCRA 43, 56-57.

[7] Revised Rules of Court , Rule 39, Section 6, provides:

Sec. 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

SEC. 2. *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory. (2a, 10, R51).

Third, the determination of whether there has been full satisfaction of judgment cannot rest solely on the lower court because the decision on the merits has effectively been **our** decision; we cannot be denied a say on whether **our** decision has been fully satisfied. In blunter terms, the Makalintal Orders cannot effectively bar our ruling on any of the execution and other issues Judge Makalintal took the liberty of disposing in the course of issuing a post-judgment order.

Fourth, the lower court has no jurisdiction to interpret, much less reverse, this Court's final and executory judgment. We enunciated this principle as early as 1922 in *Shioji v. Harvey*.[8] "The inferior court is bound by the decree as the law of the case, and must carry it into execution according to its mandate. They cannot vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded."[9] An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.[10]

Following these established rules, the Makalintal Orders **cannot vary** the terms of the CFI decision that we consistently affirmed, among them: ***(1) the nullification of all subdivision titles that were issued in favor of Ayala y Cia and/or Hacienda Calatagan***

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[8] G.R. No. 18940, April 27, 1922, 43 Phil. 333.

[9] From the early U.S. case of *Sibbald v. United States* ([1838], 12 Pet., 488).

[10] *Torres v. Sison*, GR No. 119811, August 30, 2001, 364 SCRA 37, 43.

(and/or its successors-in-interest) over the areas outside its private land covered by TCT No. 722; and (2) the declaration that all lands or areas covered by these nullified titles are reverted to the public domain. These Orders are likewise **wrong** in concluding that, with the nullification and/or cancellation of TCT No. T-9550, nothing more is needed to be done to execute the CFI decision. TCT No.T-9550 was merely cited as one of the derivative titles. The cancellation of all the affected derivative titles, all of them sufficiently described, and their reversion to the State remain to be completed.

With his orders, Judge Makalintal committed the gravest abuse of discretion and even patently acted without jurisdiction. These are acts that in the recent past merited, not only the nullification of the *ultra vires* orders, but administrative sanctions as well for the issuer, as we did in the case of a Labor Arbiter and a retired Commissioner of the National Labor Relations Commission who were suspended in *Quijano v. Bartolabac*[11] for taking the liberty of deviating from this Court's final and executory judgment.

As our last point, Ayala has no basis to complain about the terms of the decision as its *fallo* is sufficiently complete for purposes of execution and has all the data required for its implementation; the titles to be cancelled and the properties they cover — all sufficiently described in the decision — are matters of official record. One only needs to: ***look***, with meticulous care, at the official records with the concerned Register of Deeds to find out the various derivative titles of TCT No. 722; ***examine***, also with meticulous care, the records at the Director of the Lands (or its successor offices, the Land Management Bureau and/or Surveys Division of the Department of Environment and Natural Resources Regional Office) to compare the approved plan for TCT No. 722 and the approved subdivision plan for the derivative titles — ***Psd-27941***; and ***finally, consolidate*** the findings into an integral whole, to arrive at the derivative titles that should be nullified for reversion to the State. The relocation survey we previously ordered, now directed by Judge Austria, can best achieve these desired results. We stress however that

[11] A.C. No. 5649, January 27, 2006, 480 SCRA 204.

the relocation survey is but a tool to prevent any possible error that may result in the execution of the CFI decision; it cannot and should not be regarded as an opening for another round of litigation on the issues definitively settled a long time ago.

We need not discuss Ayala's other points as they relate to the merits of the decision under execution and are matters that have long been laid to rest.

In sum, the CFI decision in Civil Case No. 373 is the judgment that we consistently affirmed and this decision has long become final and executory. Under the **doctrine of finality of judgment** and by operation of law, it has become immutable and should now be respected. Under the **doctrine of *res adjudicata***, the decision effectively bars a re-litigation of the issues settled with finality, particularly, the titles subject to nullification and reversion. Under the **doctrine of the law of the case,** the CFI decision, as affirmed, is the controlling ruling that should guide further or future action on Civil Case No. 373, specifically, the execution process. This ruling shuts all doors to any objection to the execution of the affirmed CFI decision that a recalcitrant losing party may still conceive.

WHEREFORE, we *DENY* the private respondents' motion for reconsideration for lack of merit. We reiterate our directives in our Resolutions of November 16, 2006 and April 15, 2008. This denial is *FINAL*. Under pain of contempt, no further pleadings and motions (including one for reconsideration or clarification) shall be allowed in these long pending cases.

SO ORDERED.

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

Corona, J., on official leave.

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